

THE
Practick Part
OF THE ^{Feb 12 87}
LAW:

Shewing the OFFICE of an
ATTORNEY,
in the Courts of *Kings-Bench*, *Common-Pleas*, and Pleas in the *Exchequer*,
And the manner of their Proceedings in any
Action Reall, Personall, or Mixt, (from the
Originall, to the Execution) in all Courts; With
the Exa^{ct} Fees of all Officers and Ministers of the
COURTS.

TOGETHER

With special Instructions for the Sollicitation
of any Cause in *Chancery*, *Exchequer-Chamber*,
Dutchy-Chamber, &c. very usefull for all men.

arefully Revised; With an Exa^{ct} TABLE, wherein are
contained all the Principal Matters in the whole Book.

London, Printed for, and are to be sold by G. S.
H. T. J. P. J. B. W. P. T. B. R. P. C. W.
T. D. W. I. A. B. C. H. J. A. J. P. and J. L.
at their Shops in the *Temple*, and in *Fleetstreet*, and
Holborn.

W
p8955



William



Rec. Nov. 14, 1899

Ed

TO THE
READER.

Reader,



Having observed the many Errors daily committed through the mistake of the nature of the Action to be sued, and consequently, as well the misgrounding of the Action, as the undue prosecution thereof, to the utter loss of many a Cause, hath put my Intentions on work to give thee some light in such wayes, where either thou dost voluntarily go to persue thy Right, or art Involuntarily driven to defend thy Right: To that purpose was this Composure undertaken, wherein thou shalt find the whole progress of the LAW in the Practical part: So that whether thou hast business of thine own, or on the behalf of another, here upon all occasions thou mayst find Instructions for a due and full prosecution thereof; there
43 *being*

The Epistle.

being scarce any Actions, Recall Personall, Mixt, in what Court soever, but their Nature Progress, Judgment, and Execution is here explained, with the Duty of all Officers, Judiciary and Ministeriall; as also the justifiable Fees and Allowances of the Prothonotaries, Masters of Offices, Secondaries, Clerks, Attorneys Sheriffs, Under-Sheriffs, Bayliffs of Franchises, and prescribed Liberties, the practice of the High Court of Chancery, the Fees of the Six Clerks &c. All which being methodically disposed, with an exact Table to every particular, will, I hope, render thee a Benefit worthy of thy kind acceptance. But especially now, since the many and materiall Amendments of this Impression, do in a higher measure challenge the same.

Farewell

AN ADVERTISEMENT to the
READER.

THIS BOOK, for the greatest part of it, having been printed before the beginning of the late Great and Heavy Visitation, hath by reason of its long delay of being published, some things contained therein, which since that time have been altered by Authority; of which it is thought convenient to give you this Caution, that neither those alterations or omissions might be by the Learned attributed either to ignorance or neglect; the particulars whereof you may take notice of as they follow; viz.

Page 217. where it is said, That in every Action wherein the Plaintiff recovereth Damages to the value of 13 l. 6 s. 8 d. he payeth 1 d. in the pound Damage Cleer when the Judgement is signed; Instead thereof you are desired to take notice of a Statute made 17 Car. 2. cap. 6. apud Oxon. to this effect, viz. All Damage Cleer or Fees called Damna Clericorum, from and after the 29th. of September, which shall be in the Year 1672. shall cease and be abolished in all Courts of Westminster and
elsewhere

An Advertisement to the Reader.

elsewhere within England and Wales. And
untill the said 29. of September 1672. and
longer, Damage Cleer shall be payed and allowe
out of such sums of money only as shall be actu
ally levied or payd by or from the Defendants
and only for the proportion of the summe and
sums of money levied or paid, and no more or
otherwise.

Page 240, 241. In the Latitat and Bill of
Middlesex, be pleased to insert the Clause of
ac etiam Billa, &c. which sets forth the cause
of action, and is given by the Statute made
13 Car. 2. cap. 2. Stat. 2.

If there be any other escapes, it is hoped, that
they are not as all materiall, and therefore that
they will not be looked on as defects, but ra
ther as accidentall slips, which Ingenuity will
easily and readily passe by.

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The Compleat

Attorney;

giving full and exact Directions for all manner of Proceedings at Law, in all Courts whatsoever: Together with all Fees incident thereunto.



HE Office of an Attorney requires much knowledge both of the Theorique and Practick parts of the Law.

The one is to be gained out of the Body of the Law, and cannot be expected to be ascertained in this small Tract.

For the better enabling of him to the end, is this ensuing Discourse intended, wherein we shall begin with the Court of *Common-Pleas*, as being of the largest extent, in relation to the multiplicity of *Actions*, both *real*, *personal*, and *mixt*, properly incident to that Court, wherein persons of the Nation, either as Plaintiffs or Defendants, more or less concerned.

The *Common-Pleas* hath been a Court *tempore de iure*, &c. 2 *Just.* 22.

This Court consists of a Chief Justice, and three other Judges.

In *Edw. 3.* time there were nine Justices at once; in King *Edw. 1.* time, 6. in *E. 1.* there were five.

The Subordinate Officers are;

The *Custos Breviarum*, or Keeper of the Writs.

B

Com-

The Compleat Attorney.

Commonly called the chief Clerk of the *Common-Pleas*, *Three Prothonotaries*, one of which was anciently incident to the *Custos Breuium* for the time being, who by themselves and their Clerks, draw all Pleadings and enter them, and exemplifie and recover all common Recoveries.

The *Clerk of the Warrants*, who entred all Warrants of Attorney, and inrolleth all Deeds acknowledged before the Justices of the Court.

Philizers, who make all manner of mean process upon original Writs before appearance.

The *Clerk of the Effoyns*, who doth enter the Effoyns and Exceptions, in all Actions wherein Effoyns lye, and preparereth and maketh all the Rolls used for the Court.

The *Clerk of the Outlawries*, who maketh the *Capias* *Ulagatum*, upon return of the Exigents brought in unto them. This Office is properly incident to the Attorney General for the time being.

The *Clerk of the Superseas*, who makes Writs to supersede the Outlawing of persons, granted by Letters-Patent under the Great Seal of England.

The *Exigencers*, who are four in number, and make the Writs of Exigents and Proclamations, in order to Outlaw upon the *Plures Capias*, brought in unto them.

The *Clerk of the Furies*, who makes the Writs of *Habeas corpora*, and *Distringas Fur.* for the tryal of Issues.

The *Chyrcographer*, who doth make the Indentures of Fine levied, and hath many subordinate Clerks for the several Counties where the Lands lye.

The *Clerk of the Kings-silver*, who doth enter on Record the Money which the King is to have upon Fines, for Post-Fines, according to the yearly value of the Land, the same is rated on the Writs of Covenant.

The *Clerk of the Errors*, who makes all *Superseas's* on Writs of Error, and doth transcribe the Records out of the Treasury, belonging to the *Common-Pleas* into the King's Bench.

The *Keeper of the Treasury*, who hath the keeping of the Rolls entred of Record in the Court, and the making of Copies and Exemplifications thereof, and also of Records of *Nisi-prius*.

The *Proclamator of the Court*, the *Keeper of the Court*,

Office of the Inrolment of Fines and Recoveries, erected by the Statute of 23 *Elix* 3.

Four Cryers, or *Tip-Flaves*, Substitutes of the Proclamator.

The *Warden of the Fleet*, who by himself, or his Deputy, is attend the Court, that Prison being proper for all Commitments out of that Court.

The *Pleaders* are all *Sergeants* of the *Cofse*, none under that degree being allowed to plead in that Court.

The *Attorneys* are very many, being not limited to any set number; and were such as either had studied the Law for many years in some Inn of *Chancery*, where was usually their residence, or had served for the space of six or seven years, with some able Attorney of the Court; whereby they come to be very knowing in the Practice of the Court; the better to manage their *Clients* Causes with ability and integrity, to the honor of the Court, and their own credit.

Anciently they were limited: as appears in 20 *E.* 1. and 71. Pat. by the Records in the Tower of 20 *E.* 4. *sum septies vid.* *Selden's Note on Fortescue* 3.

At the time of their being admitted Attorneys, there is an Oath administered unto them as follows.

Ha *YOU shall do no falsehood, nor consent to any to be done in the Court; and if you know of any to be done, you shall* of *know* *knowledge thereof to my Lord Chief Justice, or other his* e *seven* *then, that it may be reformed. You shall delay no man for* or *malice, nor shall increase no Fees, but be contented* A *Recor* *the old accustomed Fees. You shall plead no Forein Plea,* s, *for* *sue no Forein Suits unlawfully to hurt any man, but such* and, *shall stand with the Order of the Law and your Conscience.* shall *seal all such Process, as you shall sue out of this* e *as* *with the Seal thereof, and see the Kings Majesty, and* e *ord Chief Justice discharged of the same. You shall not* e *Kingly nor willingly sue, nor procure to be sued, any false* ing *nor give aid or consent to the same, on pain of being* e *disfined from the Court for ever. And further, you shall use* e *yourself in the Office of an Attorney within the Court, accord-* e *to your learning and discretion. So help you God.*

The Compleat Attorney.

Having taken his Oath, he is to pay the Fees of Court incident thereunto, as follows ;

Imprimis. To the Judges Box, 20 s.

To the Secondary of the chief Prothonotary, who gives the Oath, 12 d.

To the *Cryers, Court-Keeper*, and other Officers, 11 s.

Then must he have a Note from the Prothonotary whose Office he intends to enter, directed to the Clerk of Warrants, which is usually made, as follows :

De Termino Sancti Hillarii, Anno Regni Caroli secundi Regis Angliæ, &c.

T. D. Gen. Furas. in Cur. 10. die Febr. isto eodem termino in Offic. Attornat. Dom. Regis de Com. Banco.

To which the Prothonotary subscribeth his Name. Which Note being delivered to the Clerk of the Warrants, he enters the Names into the Roll of the Attorneys Names.

The Clerk of the Warrants hath for the entering thereof 20 s. and 4 d. and for the Roll of that Term 4 d.

And so he stands charged to pay 4 d. for the future, so long as he continueth an Attorney of the Court for that Term.

The Attorney thus fitted for practice, he must be careful in taking right and due Instruction from his Client, and inform himself of whatsoever is materially incident to his Cause, that so he may know what manner of Action is most proper to be brought on the behalf of his Client. A Cause once thoroughly weighed, and rightly grounded, will run on with a great deal of ease and satisfaction, both to the Attorney and Client.

The Attorney ought to be thoroughly versed in the nature of all sorts of Writs, as in the Register, Terms of the Court, and other Books now extant.

To begin with Actions of Debt.

First, you are to take notice of your Plaintiffs name, of his cause of Action, whether it arise by Bond or otherwise, which are called Specialties, and otherwise for Arrear Rent, Wares, Cattel sold, or any other Chattels, or for Service done, &c. If by Bond, or Bill, you must take

and Note of the Defendants name, together with his Addition precisely, as he is written in the Obligation or Bill, that so you may make your Original, and your other Process, to agree with the Obligation, otherwise it is Erroneous.

That done, you must make a short Note to the *Cursitor*, in Debt, as follows;

Pr. J. C. nuper de L. o: Gen. alias J. C. de L in Com. Her. London ff. ut. quod iuste, &c. reddat. T. B. 40 l. &c. Aff. r. 15. Pas. S.

If you lay your Action in the Countrey, then thus:

Pr. J. L. nuper de S. in Com predicti Yeoman, alias (littere) Yeoman: Re R. J. l. ret. cr. Trin.

You may put four Names, and no more, in an Orig. in Debt or Trespass.

Qu. What other Actions, and how many in other Actions.

Against two Defendants.

Pr. W. B. nuper de L. Yeoman, alias W. B. de B. in Parochia de L. Yeoman. Pr. G. B. nuper de Lond. Yeoman, alias G. B. de F. in Parochia de G. in Com. S. Yeoman, 15 Pas. W. 15 l. uterque.

And so if there be four.

Which being done, you must carry your Note or Notes to the *Cursitors Office*, and deliver it to that particular *Cursitor*, who is for the County you lay your Action in, who taketh your Original, and delivereth it you under Seal.

This Original is your first Process, and is a Summons: although it issue out of the *Chancery*, yet it is made returnable before the Justices of the *Common-Pleas* at a certain return: And between the Teste and return of the Writ (as also in all other ordinary Writs to be sued forth, and procured upon the same) must be fifteen days at the least.

Note, That this Writ may bear Teste out of the Term, because it is to be understood, that the *Court of Chancery* is always open.

All other Process sued forth at the *Court of Common-Pleas*, must bear Teste sometime within the Term, and in the name of the Chief Justice of the same *Court* for the time being.

ing, and one Writ is to bear Teste from the return of a
 ther, as naniely the *Capias* (which is the next Writ to
 Original in an Action of Debt) from the return of the O
 ginal, the *Alias Capias* from the return of the *Capias*, and
Plures from the return of the *Alias*, and the Exigent
 Proclamation from the return of the *Plures*; and these
 the severall Writs in order to an Outlawry.

1. Before the Conquest, and a good while after, n
 could have been Outlawed but for Felony, *Mirr. cap.*
 5 3.

2. In *Bracton's* time, and somewhat before, the Ju
 resolved, that Process of Outlawry should lye in all Act
 that were *vi & armis*, *Bract. lib. 5. 421.*

3. By the *Stat. 13. 2.* Process of Outlawry lyes in
 tempt.

4. By the *Stat. 25 E. cap. 17.* Process of Outlawry
 in Debt, Detinue, and Replevin.

5. By the *Stat. 15 H. 7. 9.* the like Process, in case
 Trespas.

For Covenant, *Vide Stat. 23 H. 8. cap. 14.*

6. The Return of your Original in Debt, is thus :

Pleg. de prosequend. { *Johannes Doe.*
Richardus Roe.

If there be no Pledges returned upon the Original,
 may plead in abatement : *d.*

*Infra nominat. J. S. nihil habet Balliva in nostra per
 Sum. potest.*

Respons. R. F. Mil. & A. B. Armig.

If there be two Defendants in the Original, the Re
 must be thus :

*Infra nominat. J. C. & D. L. nihil habent in Balliva
 fra per quod Summon. possunt.*

Respons. R. F. & A. B. Armig.

If there be more than two Defendants. then thus :

*Infra nominat. J. C. & cat. i Descend. infra script. i
 habent in Balliva nostra per quod Sum. possunt.*

Note, It is said (within our Mayliwick) because the A
 on lyes in London, where there are two Sheriffs : otherw
 where there is but one Sheriff, you say (within my Ba
 wick) and the like, for all the Cities that have two

Shiffs; and likewise the words (the answer of) are intended
only where there is two Sheriffs; otherwise, you barely re-
cite the Sheriffs name and file at the bottom of the back of
the Writ.

Your Original being thus made and returned, you must
deliver the same to the *Philizer* of the County, City, or
Shire, where your Action is laid, to have such further Pro-
cess made thereon, either in suing to the Outlawry, or
otherwise, as the present Term wherein you sue forth the
same, shall by reason of the length or shortness of the time
allow; observing the former Rule of fifteen days betwixt
the Teste, and the return of every Process.

The ordinary and usual Process thereupon with the *Phi-
lizer*, are those formerly mentioned, which he maketh upon
the Original Writ brought to him, for which you deliver
him 4 d. as payable to the *Custos Brevium*, for filing the
Original.

- First, A *Capias*, for which you pay 10 d.
- Secondly, An *Alias Capias*, which costs 6 d.
- Thirdly, A *Plures Capias*, for which you pay 6 d.

The Returns whereof are as follows:

Infra nominatus J. C. non est invent. in Balliva nostra.

If two Defendants, thus:

J. C. & R. B. Non sunt invent. in Balliva nostra.

And if more than two Defendants, then thus:

*J. C. & ceteri Defendent. infra script. non sunt invent.
in Balliva nostra.*

The Answer of R. B. and J. S. Sheriffs.

But if you intend not to sue the Defendant to an Out-
lawry, but that his body may be easily and readily ar-
rested, then you need not proceed further than to the *Capias*
only; and deliver the same to the Under-Sheriff of the
County, and procure a Warrant thereupon, and get him
arrested by the Sheriffs Bayliffs, which is a great furtherance
to your Clients cause, in relation to a Trial, and procuring
Judgement.

Note, That you are to pay 4 d. as a *post-diem*, for each of
the aforesaid Process, which you bring not into the *Philizer*
by the day of the Return.

The two chief Terms, wherein to commence Suits to the Outlawry, are *Easter* and *Michaelmas* Terms, they having in them the most Returns ; for if you begin in *Easter*, you shall Outlaw the party , if he appear not in *Michaelmas* Term next following ; and if you begin in *Michaelmas* Term, you shall do the like in *Easter* or *Trinity* Term the next following.

Note , That you may have an Original Writ made returnable of a precedent Term, upon bringing a Note to the *Cursitor* within seven days after the Term begun ; but if you slack the time, you lose your advantage.

Qu. This course now against a Knight , or other Freeholder, or Noble-man,

Anciently the course hath been, that if an Original Writ be made against a Knight, Esquire, Gentleman of worth, or other substantial Free-holder, that hath sufficient Land and Tenements in the same County where the Action is laid, then ought a Summons to be returned by the Sheriff of the County, who is to execute it : And you cannot return the Original of course, by the return of (*nihil habet*, &c) For otherwise the Defendant, if he have sufficient in the same County, and he be returned, (*nihil habet*, &c.) may bring an Action of the Case, for disabling of him in his Estate against the Attorney for the Plaintiff, or against the Under Sheriff of the County, who shall make such return, to disable him upon a Summons : if he appear not, you proceed by *Pone*, and so to a Distress ; and if he appear not upon the *Distingas*, you have an *Alias Distingas*, and so Distress upon Distress, until he appear ; but this manner of proceeding by way of Summons, hath not been used of late.

Upon the making and suing forth of the Original Writ, if the Debt or Damages therein specified, do exceed forty pounds, then there is a certain Fine due for the same, to be paid to the King.

Imprimis, From forty pounds, to a hundred marks, pays

6 s. 8 d.

From a hundred marks, to a hundred pounds, pays 10 s.

From a hundred pounds, to two hundred marks, pays

13 s. 4 d.

From a hundred thirty three pounds six shillings and eight pence, to a hundred sixty pounds thirteen shillings and four pence, pays 16 s. 4 d.

From

From a hundred sixty six pounds thirteen shillings and four pence, to two hundred pounds, pays 10 s. 0.
And so consequently, for every hundred Marks more, pays 6 s. 8 d.

And for every hundred pounds more, pays 10 s. 0.
If you begin in *Easter Term*, you may procure your *Capias* and *Alias Capias*, returnable in *Trinity Term*, and in *Trinity Term* sue forth your *Plures Capias*, *Exigent* and *Proclamation*; if in *Michaelmas Term*, you may sue forth the *Original Capias*, and *Alias Capias* returnable the same Term; and a *Plures Capias* returnable in *Hillary Term* the next following; and in the same Term procure your *Exigent* and *Proclamation*.

Note, That if you lay your Action in *London*, the party will be the sooner outlawed, in respect of the *Hustings*, being nearer there than elsewhere.

Now if the party have sued out his *Original* in *London*, and the party live elsewhere, and that he would have him more speedily arrested than by way of Outlawry upon the return (of the parties not being found, &c.) by the Sheriff, he may have a *Testatum* into the County where he liveth, to arrest him there; the Fee of which Writ is 12 d.

All the Writs before mentioned, must be filed with the *Under-Sheriff*, either by your Self, or the *Philizer*, or otherwise will be Errour in the proceedings.

The *Plures Capias* being orderly procured, sued forth and returned, must be delivered to the *Exigenter* of the County where the Action is laid, and he will make an *Exigent*, and *Proclamation* thereupon.

The *Exigent* and *Proclamation* must be delivered to the *Under-Sheriff* of the same County where the Defendant dwelleth, to be executed according to the Form of a Statute in that case made and provided, and according to the tenure and form of the said Writ.

Three Proclamations shall be made in every Action personal, wherein any Writ of *Exigent* shall be awarded by the Stat. 31 Eliz. cap. 3. viz. One in the *County-Court*; one in the *Quarter Sessions*; and one a Moneth before the *Quintus*, at the Church-door where the party lives.

And before this Statute, by the Stat. of 4 Hen. 8. 4. and 4 Hen. 8. 4. Proclamations were awarded, where the party did

did not live in the same County where the Action was laid.

The charges of a Suit to the Outlawry are as followeth

Doe
against *Roe* } Easter Term, 1651.

For the Fine to the King,	l. s. d.	
	0-10-0	
For the Original, <i>Post diem</i> , and Entry,	0-1-5	s. d.
For the <i>Capias</i> , Seal, and <i>Post diem</i> ,	0-1-9	17. 11
For the <i>Alias Capias</i> , Seal, and <i>Post diem</i> ,	0-1-5	
For the Attorneys Fee,	0-3-4	

Trinity Term following.

For the <i>Plures Capias</i> , Seal, and <i>Post diem</i> ,	l. s. d.
	0-1-
For the Warrant of Attorney,	0-0-
For the Exigent and Seal,	0-1-
For the return thereof,	0-1-
For the Attorneys Fee,	0-3-
For the Proclamation and Seal.	0--

The Exigent is 4 *d.* a name, and the Return of the Proclamation is 1 *d.* this last *per Stat.* of 31 *Elix.* cap. 3.

The *Philizer* hath 6 *d.* for the Proclamation, *per Stat.* 6 *H. 8.* cap. 4.

If the *Exigent* be against several Defendants living in several Counties, several Proclamations must go to the Sheriff of the several Counties, which will increase the charge. And further take notice, there must be of necessity in County-days, between the *Teste* and the *Return* of the *Exigent*, or else you must be necessitated to sue forth another Writ, called an *Allocatus*, from the said *Exigenter*, to be delivered to the said Under-Sheriff, to the great hinderance and charge of the Client; and your *Allocatus* must be *Teste* with the Return of your former *Exigent*, and be returnable the next Return, after the fifth County-day, and your *Exigent* and Proclamation must have one and the same *Teste* and Return.

You must carefully examine all the aforesaid Processes that there be no difference or variance either in the Sum Names, or Additions, from your Original Writ, that they may each warrant the other.

The same Term that you sue forth your Exigent and Proclamation, you must then file a Warrant of Attorney, for the Plaintiff who is your Client, with the Clerk of the Warrants; in Failure whereof, you commit manifest Error in the prosecution of your Cause, to the great hindrance and hurt of your Client, and danger of your self, by incurring the Forfeiture of ten Pounds, by a Statute made in that behalf.

The Form of a Warrant in Debt is as follows, and must be ingrossed in Parchment.

London ff. A. B. Ponit loco suo C. D. Attornatum suum versus F. nuper de London Gen. alias dictus T. F. de S. in Com Glouc. Gent De placit. Debit.

If in Trespas.

Dorset ff. G. W. Ponit loco suo T. G. versus J. L. de B. in Com. prad. Gen. de placito transgres.

If in Case, say, *De placito transgres. super casum.*

And the like in other Actions

The Exigent and Proclamation being returned, you must then file the Proclamation with the *Custos Brevium*; and if you file the same, or any other Writ there before the Return be past, or upon the Return-day, then you must pay nothing for filing the same; otherwise, every Writ payes 4 d.

Well-experienced Practisers know how to save many of their *Post-diems*, by having their Writs made ready in an early manner.

In case of not filing your Writ or Writs, in or of the same Term they are returnable, they force you to pay when you file them with the *Custos Brevium*; for the *Post Terminum* of them, which is 20 d. for every Writ, every Term the same is unfiled, except Exigents, for which you pay onely one *Post Terminum*, which, as aforesaid, is 20 d.

It is very unsafe, in relation both to your self and Client, to keep your Writs unfiled, (the filing of them being the substantial warranty for the Proceedings had upon them) lest a Caveat be obtained from some of the Judges in that behalf, which is called *Ne recipiatur*.

The Exigent being returned by the Sheriff of the County,

ry, and you being willing to procure Process of Outlawry against the Defendant to arrest him upon the same, he being Outlawed, you must then carry the Exigent so returned, to the Clerk of the Outlawries for the time being, and he will make you a Writ or Writs, into any County you shall desire him, where you can any ways discover the party to be, or any Estate of his, either in Lands or Goods, yea into several Counties at one time; because those Writs are as well on the behalf of the KING, as for the Plaintiff.

There be two several Writs of *Capias Utlagat*. the one called a General *Capias Utlagatum*, being for the apprehending of the Body of the Defendant onely: The other especial, being against his Body, Lands, and Goods.

You having now the Exigent in your hands, ready to file, I thought fit to let you know the accustomed Fees for suing the Outlawry out, and Process thereon.

The Fees of the Capias Utlagat.

TH E filing of the Exigent with the Clerk of the Outlawries in the same Term, it is returnable, pays 1 d.
 If it be with a *Post Terminum*, pays 20 d.
 The General *Capias Utlagat*. pays 10 d.
 The Special, pays 2 s. 4 d.
 The Seal of either, pays 1 d.
 The Fee of the Attorney suing it forth, 3 s. 4 d.
 Several ways there are to discharge and avoid the same as occasion serves, whether the party be taken, or otherwise.

The first and most usual way is, to reverse it by *Error*, found in the return of the Exigent, which may be committed many ways, and is not unfrequent, either by mistaking the *County-days*, in not allowing sufficient time between any of them, or in mis-naming of the person, or omitting, or mistaking of the *Sheriff's name* to the same Writ or Return; or by words which will bear no signification, or otherwise, as Experience and Practice will better instruct you: And secondly, by any *Error* to be found in the Return of the Proclamation, which may be committed many ways, as aforesaid.

Likewise for want of filing the Proclamation with the

Custos

Custos Brevium, as also for want either of the Return, or a due Return or Mis-entry or Mistakes, either in the Original *Capias*, *Alias*, and *Plures*, afore-recited.

This by the Stat. 31 *Eliz.* cap. 3.

For all which, there must be diligent search with the *Custos Brevium*, or in the other Offices where the proceedings have been.

Upon the finding of any sufficient *Error*, either in those, or any other the proceedings: Then the File of Writs, in which the said matter of *Error in Writ* is filed, must be brought to the *Custos Brevium* into the open Court; there to be seen and perused by one of the Judges of the same Court, and the *Errours* to be allowed, or disallowed, according to his discretion and judgement.

This by the Stat. 31 *Eliz.* cap. 3.

Upon Reversal of an Outlawry, for want of Proclamation in all Cases, or for any other default, if the Debt or Damage amount to 20 *l.* or above; there must be Special Bail entered by the Defendant, with Sureties to answer to the Plaintiffs Suit, and pay the Debt and Damage demanded, or yield his body to Prison, if the Defendant shall be condemned in the Action; which Bail must be taken out into the Remembrance in the same Prothonotaries Office, where the same is reversed. And then if the party outlawed be taken, and arrested, or fear to be so, upon notice of an Exigent against him, he may have a Writ of *Superedeas* directed to the Sheriff of the County where he is, or seareth to be taken, for his discharge; which Writ is to be made and signed in the same Prothonotaries Office where the Outlawry was reversed.

The Outlawry thus reversed, the Defendant is bound by his Attorney to appear, and to accept of a Declaration at any time within two Terms then next following after the said Reversal, and then to answer according to course of Law.

Upon the Reversal of every Outlawry, the Attorney ought to have a Note or Certificate thereof from the Prothonotary, to the Clerk of the Outlawries, that no further Process may be made against the Defendant upon the same, and to see the Outlawry Book discharged, for which he must pay

25. 8 *d.*

The

The Fees of the Reversals, according to the occasions, are uncertain, but the usual and accustomed Fees follow.

For search and Copy of the Outlawry,	8 s.
For search with the Custos Brevium, for every particular Term you need to use,	5 s.
For carrying the Bundle of Writs to the Hall,	2 s. 9 d.
For putting in the Bayl,	6 s. 4 d.
To the Box,	1 s.
To the Prothonotary for entering the Reversal, upon insufficiency of the Return,	8 s.
For the Judges Fee,	4 s.
To the Clerk of the Outlawries, for discharging the Book,	3 s. 6 d.
For the Superseas,	2 s. 7 d.
For the allowing thereof with the Sheriff,	2 s. 4 d.

This is by the Statute of 1 Hen. 5. cap. 5.

And the Addition of the Estate, Degree, or Mystery, ought to be by force of that Act, as the Defendant was the day of the Writ purchased, 2 Inst. 670.

An Outlawry also may be reversed, although there be no Error in return or Entries of the Exigent or Proclamation: and although the Proclamation be filed with the Custos Brevium, as namely, if that the same Proclamation were not awarded according to the form and effect of a Statute in that case provided, into the County, and the Defendant named of the Parish, where he had been resident: See Dyer, 313, 314. a good case hereupon *infra annum & diem*, when next before the same Suit was begun, and commenced, or that the Defendant be mis-named therein, in his Surname, Degree, or Mystery. And this Reversal is to be done by way of a Plea, drawn by a Clerk to that purpose; for which you shall finde Presidents in the Book of Entries, to which Pleas the Attorney General's hand must be procured; but this way, as being both very troublesom and chargeable, is much out of use.

It may also in this Case be reversed by Writ of Error, (as well as by Plea of the Party) coming in upon a Capias Vilagat, according to the course of the common Law, 2 Inst. 670.

An Outlawry may be also reversed by the Kings General Pardon;

Pardon, which is usually granted at every Parliament, if so the Defendant were outlawed before the day thereby limited, or by a special Pardon, which must be done by way of *Placitum*, and *Scire Facias*, directed to the Sheriff of the same County, wherein the Action was first laid: And if the Sheriff do return a *Scire Feci* upon the said *Scire Facias*, then you shall need but one Writ of *Scire Facias*; if not, then you must have two returned with *Nihil*, &c. in this manner.

Infra nominatus. A. C. Defend. nihil habet in Balliva mea per quod ei scire facere possum neque est invent. in eadem.

D L. Mil. Vic.

These *Scire Facias*'s are to be drawn by the Prothonotary Clerk, and then entred into a Remembrance in the same Office, and a *Superfedeas* made, and a Certificate also made above, from the Prothonotary to the Clerk of the Outlawries, that from thenceforth no further Process may be made against the Defendant, and also entred upon Record. And note in this case also, the Defendant must by his Attorney appear, and answer the Plaintiff in his Action, but no Bail need be put in.

The Fees thereof.

For the Copy of the <i>Exigent</i> ,	8 d.
The two <i>Scire Facias</i> and Seals,	5 s. 2 d.
The Returns thereof,	2 s.
The filing of them,	8 d.
The taking out of the Remembrance,	1 s.
The Copies,	3 s. 4 d.
The Prothonotary,	5 s. 4 d.
The <i>Superfedeas</i> , and allowing thereof,	4 s. 11 d.
The Certificate,	1 s.
The Clerk of the Outlawries,	2 s. 8 d.
The Attorneys Fee,	3 s. 4 d.

An Outlawry also may be reversed by Writ of Error upon Error in the proceedings, as the want of the Warrant of Attorney, the not filing of the Original, *Capias*, *Alias*, or *Plures*, and then your course therein follows.

In the first place, you are to have a Copy of the *Exigent*, or *Capias Utlagat*, which is to be carryed to the *Cursitor* of the County where the Action lyes, and where the Defendant

dant is returned outlawed, to have a Writ of Errour made thereupon, which Writ must be brought under Seal to the Lord Chief Justice of the *Common-Pleas*, or his *Clerk of Errours* for the time being, with the Copy of the Outlawry and the manner and charges of reversal in the Vacation and thereupon the Clerk of the Errors of the *Common-Pleas* makes a *Superfedeas* to the Sheriff of the County, where the Defendant either is, or fears to be arrested for his discharge and from him procure a Certificate to the *Clerk of the Outlawries*, (as formerly) the charge of the *Superfedeas* 33 s. 4 d. besides the Search and Copy of the Outlawry. And in this case, the Defendant by his Attorney must appear upon a new Original sued out by the Plaintiff within two Terms: And this is the most usual and ready way (though most chargeable) for discharging of an Outlawry (especially in the *Vacation*) if the Defendant be either under Arrest, or fear to be Arrested; but Bail must be put in if the Debt or Damage amount to 20 l. as in the like Cases before recited.

It's requisite in this case, the Attorney should take Money of the Defendant for the Declaration, and his Fee again the next Term, at the time of the delivery of the *Superfedeas*, (especially if the Defendant be not well known unto him, and a Warrant under his hand to appear, plead, or confess the Action; for many times the Attorney is put to great charge and trouble to finde out his Client.

These are the general and particular Instructions and Directions to sue to the Outlawry, and to arrest thereupon and how to reverse the same both in the behalf of the Plaintiff and Defendant; besides which, there are other ways of suing by *mean Process*, when they proceed no further than to the taking out of an Original, and then making an Arrest upon the *Capias*; or in case the party cannot be taken before the return of the said *Capias*, then you may take out *Capias* by continuance, which costs you 10 d. to the *Philix* viz. 6 d. the Writ, and 4 d. the *post diem*, besides 7 d. for the Seal.

And having now dilated at large the several Proceedings in Actions of Debt, in order to *Outlawry*, or otherwise, and likewise the *Reversal* of such Outlawries, whereby the Defendant comes to appear, it now rests we should shew how

they may declare, and in what manner those Declarations must be: But before we proceed so far, it will not be amiss to insert some few Rules or Observations, as a Guide for the Attorney, both in the taking of Instructions, and drawing his several Declarations in other personal Actions, as follow.

IN Actions of Debt, either upon *Specialty*, as Bond or Bill; or for *Rent Arrear* upon a Demise by Indentures, or otherwise, or upon an *Action of Covenant*, you must have recourse to the several Writings, by which you warrant your said Actions, and the circumstance of time, either for the date of the said writings, the place, the quantity of what rent arrear, for what time, when commencing and ending, and what particular Covenant; (if but one) in an Action of Covenant, you intend to insist on, for the laying of the breach right; and likewise you must inform your self how your client came to be intitled to the Debt, whether as *Obligee*; otherwise, as *Executor*; or *Administrator* of the *Obligee*: and if for arrear of Rent whether the party came to it by *an assignment or reversion*, in which cases you are to inform your self of the *Attornment*: in case of a Lease for years, the reversion for years will pass without an Attornment of the Tenant, and for what time the Rent is arrear, and look at right the immediate Lessor or Lessees have, the same is their Assigns.

Things in action cannot be assigned, as the Assignee shall bring his action in his *own name*, unless in case of an Assignee a Bankrupt, or the like.

If Rent groweth by *Lease-paroll* from year to year, which is so called, if there is nothing under Hand and Seal, but barely by word of mouth, to signify the Demise, you must know the time of the Demise, ascertain the thing demised, the term, the Rent, and time of payment of it: The time of the Lessees Entry, and what Rent is arrear by the Defendant.

If in Debt upon Award.

You are to inform your selves of the Arbitrators names; the time of the Award made; and what was awarded; if you can get the Award it self; it is far better.

Note, that if any under the Age of 21 years, either in this or any other Action, commence Suit, he must come in by his *guardian* in proper person to be admitted, which costs 2 s. the *attaince*; otherwise, if the Defendant take notice of his

Nonag, and that he appear not by Guardian; but otherwise the Defendant may plead it in Barre to his Action.

But if the Defendant take no advantage of it, it is holpen after a Verdict by the Statute of *Jeofailes*; but where a Chancery Clerk sues, by priviledge, and obtains a Verdict at Common-Law, this is not holpen by Statute, being *causam omissionis*, as it was adjudged in *Peytons* case, in the Court of Common-pleas.

And now take some few Instructions in other Actions, Trespass upon *Assault* and *Battery*, *false Imprisonment*, &c.

In the first place, take notice of the time, or any time at which the Trespass done, before the Teste of your Original of Trespass by Assault and Imprisonment, and the place where (although I think neither of them Local) together with the time, the party remaineth deceased or imprisoned, and what it costs him by way of Fine, or otherwise, to be released.

And note, for the Assault of the Wife, Children, or Servant, the Father and Master, as well as the Servant, may bring an Action, for the loss or hindrance he receives thereby.

He cannot bring an Action for beating of the Child, as the Child, but only *per quod servitium amisit*.

For Trespass either in Closes or Houles, or chasing of Cattel; or Fishing, where another man hath right, as followeth and first,

For breaking your Close, *quod* the manner of declaring pleading in Trespass now, and how long the Trespass continued, and what Corn was consumed and eaten up, or trodden down with the Feet, and what Grass, and what value there be more than one Village in the Parish, when you may say, *apud Parochiam de S.* but if the Trespass were actually committed in one Village onely, then you may lay the Action in that Village; or else you may say, *apud Parochiam de S.* in which that Village is.

If any Trespass done for chasing of Cattel, you must lay the time and place of chasing, worrying, and beating your Cattel what Cattel, and how many they were, and what you were damaged by it either in Ewes casting their Lambs, or being torn with Dogs; or Kine in losing their Milk, casting their Calves, or Mares in the loss of their Colts, and the like.

An Action of Trespass also lyes against one, for the recovery of his own Cattel out of your hands, in case you are driven

Pleas,
Kings-
Bench.

em to the Pound; for Trespass or otherwise, or in case they
 break the Pound where you had impounded them, and drive
 em away; in both which cases, you must shew what Right
 you had to take them, either as Damage-Feasant; or that
 you did distrain them for Rent or Services Arrear.
 Note this diversity upon tendering of amends, or of Rents
 cases of distress.

1. *Tender* upon the Land before the Distress, makes the
 distress vitious, *Co. lib. 8. 146, 147.*
2. *Tender* after the Distress, and before the impounding
 makes the detainer, not the taking vitious, *ibid.*
3. *Tender* after the impounding, neither makes the one
 or the other vitious:

If your Trespass be for taking away of Goods or Chattels
 out of your ground or house (albeit Money) and such things
 commonly taken out of your house, they are to be named
 particularly, and their value; if Money in a Bag, the particu-
 lar Sum.

In case a man take away a *Ward*, an Action lyes wherein you
 must shew, how the Plaintiff came to have Right to the *Ward*
 which the Defendant detaineth, and if it be Knights-Service,
 his Fathers holding of such a Mannor of the Plaintiffs, the
 lands he dyed seized of, &c. Shew the manner of the Ten-
 ure, and that the Childs Father dyed in the Homage of the
 Lord, whereby the Right of the Childs Marriage belongeth
 to him; You must likewise know the time and place of tak-
 ing him away, the Age of the Ward, together with the
 damage the Plaintiff sustained.

Where the Tenant by Knights Service dies, his Heir within
 10 years, and a stranger enters into the custody of the Land, and
 is the Ward of the Body, a Writ of *Communis Custodia* lyes
 against the Lord of whom the Land is holden, *Vid. N. B. 88.*

Where the Infant in such case enters into the Land, and
 sues out the Lord: the Writ of *Intrusion del Guard* lyes, *ibid.*

Where the Lord proffers Marriage, and the Infant refuseth,
 the Writ of *de valore maritagi* lyes *Vid. N. B. 89.*

And in such case where the Infant marryes, the Writ of
 restitution of Marriage lyes, *ibid.*

Where the Lord in possession of the Body and land, and an-
 other, releaseth the Ward out of his hand, the Writ of
Assutment de Guard lyes, *V. N. B. 90.*

The Writ *hared. abduſt.* lyes for the Guardian in *Sage*, 91.

Ejectment of ward lyes where the Lord is ouſted out of Land, and not of the Ward; *Raviſhment de Ward*, where he is ouſted out of the Ward, and not of the Land; and *Drummond*, where he is ouſted out of both, *Viſd. N. B.* 95.

If by *Socage Tenure* the Lands holden, then the next Kindred (to whom the Lands cannot deſcend) hath that Action for his Ward, wherein he muſt ſhew what he dyed in *Socage-Tenure*, and of whoſe Mannour it was holden, together with the time the Plaintiff was ſeized of him, and time, manner, and place of his taking away.

In an Action of Treſpaſs, for ſpoiling or turning your *water-course*, you firſt ſhew how he held the *Water-Courſe*; from where, and whither the *Water-courſe* came, and that it uſed ſo to come time out of mind; then what benefit it did the Plaintiff; as in making his Grounds fertil, and for watering his Cattel; then how the Defendant did ſtop that Courſe, and with what, and the time, by reaſon whereof the Plaintiff hath loſt the benefit of it for ſuch a time; or if the Ground be overflowed by the like courſe, then ſhew how the Defendant, having ſuch a *Water-courſe* or Mills, lying near the Plaintiffs Ground, did open his Floud-gate, and ſtopped the *Watercourſe*, and cauſed it to overflow the Banks, and drive the Lands.

In Action of Account, take theſe enſuing.

T Here are but three kinds of Writs of Account againſt a man as Guardian, two as Bayliſſ, three as Receiver. *Co. Lit.* 172.

2. If it were not before Auditors, then the proper Action is an *Action upon the Caſe*, upon an *in ſimul computaſſet*.

3. See 2 *Inſtit.* 144. and 380. excellent Inſtructions about this Account before Auditors.

If an Action be brought for *Arrearages of Account*, as when divers Reckonings are between two perſons, & they account together; and upon that account, the one is found indebted to the other; then know the time when the parties Accounted, and before whom, if they had any Auditors, and if the ſame was, he was to account for, and the time when he was appointed to be paid by the Auditors.

The Proceſs in account is *ſum. pon.* and *diſtreſs*, upon *Ni-*
il returned upon any of them, Proceſs of Outlawry, *per*
at. W. 2. cap. 11. but diſtreſs in Suit was at the Common-
law, 2 Inſt. 143, 144.

If you charge any as Receiver for Moneys delivered, name
 the time when, and the place where, and the perſon that deli-
 vered it, and the Sum that was delivered; if he received it for
 the Rent of any thing, it is beſt to name the thing for what
 was, *vid. Ra. Entr. 19. Reg. 135, 136.*

If you charge him as a Bayliſſ of Lands and Goods, ſhew
 from what time he hath been ſo of the things under his
 charge, and of all things he received; and how long ſince he
 was Bayliſſ, *Ra. entr. 17.*

If you charge him as Bayliſſ for any thing he hath ſold for
 him, recite the thing to be accounted for.

You may charge him as joynt Occupyer, *Ra. entries*
19. Reg. 135.

Detinue.

N. B. 138.

The Proceſs *per Summons attachment and diſtring. F.*
B. 139. a.

If you would bring an *Action of Detinue* for any thing that
 you have bought, and cannot have, ſhew the time when you
 bought it, and what you paid, and the time for the delivery

Note, *Detinue* lyes not for Money out of a Bag. *6. S. 4. 11.*
N. B. 138 a.

If you have delivered any thing to any man, and cannot
 have it again, you may have the like Action, knowing the va-
 lue of the thing delivered, and to what uſe you did deliver it,
 and what time was appointed for the re-delivery of it, in caſe
 for Writings, either upon the delivery, or that it came
 into the Defendants hands by chance, know the Date and the
 nature of the Writing, the time when the Plaintiff was
 deſſed of it, and the time when the Defendant had it.

Detinue for Charters, that conceive Free-hold lyes in *Com.*
 and if it be brought in any other Court, the Defendant
 ſhall ſue *prohibitor. F. N. B. 238. C.*

In Actions of the Case, take these ensuing.

First, for *Trover*, which is for the recovery of Goods that come to any mans hands by chance, or not in a warrantable way, know the nature of the Goods, the value of the time and place when and where the Plaintiff was possessed of them, and how they came to the Defendants hands, and the Conversion.

In an *Action of the Case for words*, if the Plaintiff have been in any Office of Credit, it would do well to recite it in the Declaration, and know the time and place of speaking the words either to the Plaintiff, or of the Plaintiff, together with what other Circumstances may make to aggravate the words spoken by the Defendant.

In an *Action of the Case*, where Felony is laid to ones charge, and the party carried before a Justice of Peace, and so brought over to the Assizes; be sure in this case, to take notice of the time when, and the place where he laid the Felony to him, for what, and the Constables name that detained him, and the Justices name before whom he was brought, and the bail or committing of him till the Assizes, the day of the Assize held, and before whom the Copy of his Indictment, and Acquittal thereupon.

Be sure that it be a *malicious* prosecution, and also for

Upon an Escape upon a mean Process.

IF the Bailiff have arrested the party you are to sue, upon a mean Process, and either for Favour or Bribes released afterwards, so that you lose thereby the benefit of your rest.

First know what cause your Client had against the party so arrested, and for how much Money, and then set forth that for the recovery thereof, he took out such a Writ returnable such a time, directed to such a Sheriff. Whereupon a Warrant was made, and delivered to the Bayliff, by virtue whereof he arrested the party, and such a day released him.

When you buy any thing upon warranty, whether it be moving Chattel, or any Chattels or Goods that are warranted to be sound, useful, and good, or that should contain such a number, either of Loads, Pounds-weight, or measure; it holdeth not out so, an Action lyes, in which case you must take notice of the quantity and quality of the thing,

old, and for how much, the time and place, and that the Defendant did warrant it to be good, &c.

Note, that there must be an exprefs Warranty, else the Count will not lye.

An Action likewise lyes against a *Farrier*, who for a Sum of Money undertakes a Cure, and wholly neglects it, or uses contrary or poysonous Medicines, whereby your Horse dyeth, or is worsted.

And likewise against a *Smith* that pricks your Horse in the going of him, whereby he becomes lame and unuseful, and you lose the benefit of his Service.

And where a *Taylor* taketh a quantity of Cloath or Stuff to make a Suit, and cutteth it so scanty, as that it will not serve for the parties use

And likewise for many other Frauds and Deceits, both of *Shop-keepers*, *Artificers*, and men almost of all Mysteries and Professions.

Having thus given some brief Directions what to take by way of Instruction and Information for the Attorney, in behalf of his Client, in order to drawing a Declaration, shall now proceed to the said Declaration, Issue, and Judgment, after appearance made by Superfedeas to the Exigent or upon any other appearance upon Arrest had by vertue of mean Process.

THE Defendant appearing, by putting in special Bail to the Action, or otherwise upon the *Capias*, *Alias*, or *Pluries*, in the *Philizers* Office, where the same was sued forth, or by Superfedeas to the Exigent, brought and allowed with the Sheriff, you must inform your self what Attorney doth appear for the Defendant, that done, you must declare either upon Bond, Bill, Indenture, Treipass, or otherwise, as your case requires, always observing this Rule: that there be no difference between the Additions in the Writs or Sums therein contained; and your Declarations, for the most part, they mutually agree, the one being a Warrant for the other; for if there be Variance, and the Defendant take notice of it, he may plead that Variance in abatement to the Writ.

Note, in case of Bail put in, or reversal of an Outlawry, there must be an Attorney present to appear, unless the Defendant will do it in proper person.

And for the drawing of those Declarations, it requires the skill, study, and experience of an able Clerk of the *Prothonotaries* Office, and some helps there are by Books of *Entrie*.

Having your Declaration drawn, you must enter it upon the Roll of the Court, in one or other of the *Prothonotaries* Office, either by your self, or some Clerk of the Office, who must see it put in the *Dogget* of that Office, and thereto put the Number-Roll, and so enter it in your *Dogget-Book*, and keep your Number-Roll, that so you may have recourse to the roll afterward, to enter up your Continuances, if the Cause continue above one Term before Judgment or Tryall had.

Note, this must be understood, in case of continuances before pleading to Issue, otherwise the Writs are before Verdict, and after pleading, entred by the Clerk of the Judgments, in case of no Writ per the H. Officer.

By the course of the Court, the Defendants are to answer the same Term they appear, if the Writs be returnable at the beginning of the Term, especially in *Issuable Terms*, which are *Trinity* and *Hillary*; but in other Terms, if the Action is not laid in *London*, the Defendants have for the most part *Imparlan*ce, or time to plead till the next Term.

Note, that this is in case the Writ be perfect whereon the Arrest was made (and was by the new Rules) the Case hold if the Writ be roll'd the second or third return.

And here take notice there be two kinds of *Imparlan*ce, the one *General*, the other *Special*; after a general *Imparlan*ce had, the Defendant cannot plead in abatement to the Writ, Excommunication, or the like, nor any priviledge of another Court as a priviledged man.

Note, if no *Imparlan*ce appear upon Record, he may plead in abatement.

But after a special *Imparlan*ce, many Pleas may be pleaded which after the general *Imparlan*ce cannot be allowed: If special *Imparlan*ce be prayed, you must take for the Entree thereof of the Defendants Attorneys, the sum of 2 s.

Note, after special *Imparlan*ce, one cannot plead to the Jurisdiction of the Court.

If the Attorney for the Defendant, upon receiving a Declaration, do not crave that the Condition of the Bond may be entred with the *Imparlan*ce, and do not pay for the same, then he is debarred from pleading Conditions performed at any time after, without moving the Court, and paying 5 s. to the Judges Box.

Rules to answer, must be entred in some of the Remembrances in one of the *Prothonotaries* Office, which is briefly done thus:

Heref. fl. *Del. int. A. B. quer. & L. D. nuper de S. in Com. pradiſto* Yeoman, *alias diſt. A. B. de L. in Com. H.* Yeoman, *Defend. de placito debet.*

J. H. *pro quer. G. L. pro Defend.*

Which being thus written, you put either in the Margent, or over head your Rule, which is, *Niſſ Defend. placitaverit die Mercurii prox. poſt Octabis Sancti Trinitatis, (or ſome other day certain) in retur. Judicium pro quer per Cur.*

And theſe are entred either by the Secondary of the Office, where the Plaintiffs Attorney enters his Causes on the Bill of Pleas, or as before I have ſaid, by the Attorney or Clerk for him, upon the common Remembrance, for which there is 4 s. and upon the Expiration of the ſame Rule, no Plea being brought in, you muſt ſign Judgment with the *Prothonotary* for want of answer.

If the Attorney for the Plaintiff do not declare againſt the Defendant upon his appearance within reaſonable time in the Term after the appearance made, then the Attorney for the Defendant may alſo enter a Rule in the Bill of Pleas againſt the Plaintiff to declare, and thereupon cauſe a *Non proſecutus* to be entred, which muſt be ſigned with the *Prothonotary*, & Coſts given for the unjuſt vexation; for which Coſts he ſhall have Execution againſt the Plaintiff; but if the Plaintiff ſue as Executor or Adminiſtrator, he ſhall pay no Coſts upon any Non-ſuit, unleſs in an *Action upon the Caſe*, upon a promiſe made to him as Executor.

The Imparlanſe is a time of leave, or Licence given from one Term to the Term ſucceeding, by the Plaintiff to the Defendant, either to plead to his Action brought, or to let it paſs by default; and to that purpoſe, the next Term after the Imparlanſe had, as aforeſaid, the Attorney for the Plaintiff may call to the Attorney of the Defendant, to answer to the Declaration, and if he do not plead in due time, give him Rule to answer; which done, and the Rule expired, he may enter Judgment as before is declared, either by *Nihil diſt.* for the Debt and Coſts, as is very fit and very uſual in caſes before expreſſed, if Debt.

Where

Where the Defendant pleads General Issues or Pleas, as is most usual, as in an Action of Debt (*nil debet per patriam, &c.*) Or to Debt upon Bond, or Bill penal, that he did seal and deliver through Threats, &c. Or by reason of duress of Imprisonment, or that it is not his Deed, or that he hath performed Conditions, or the like; or in Action of the Case, the general Issue not guilty for Words, if upon promise, that he did not assume, &c. And for not guilty likewise in Action of Trespass or Battery. In these and the like Cases of Common-Pleas or Issues, there is no more requisite, but that the Attorney for the Defendant, do put his hand to the Plaintiffs Attorneys Dogget-Book; and that done, the Plaintiffs Attorney doth draw up the Plea, and make a Copy of the Issue, and there delivereth it to the Defendants Attorney, who must receive it, and pay for entring such his Plea: (*Qu* the Fees for entring Pleas Common) and for the Book; and then usually they give warning to a Trial, unless they forbear Trial the next Assizes.

But if the Defendant plead specially, he is to bring it to the Plaintiffs Attorney *under a Serjeants hand*; and if the Plaintiff reply specially, either by traverse or otherwise, the Replication is also to be under a Serjeants hand, and he is to give it to the Defendants Attorney.

So if the Defendant *demurre* to a Declaration, it is also to be brought under a Serjeants hand.

It's most general, that the Jury arise out of that County and Town or Parish where the Action is laid for Trial, unless it be removed by pleading; as where an Action is brought upon a Bond or Bill, and the Action laid in *Herefordshire*, and the Defendant pleads conditions performed, for the Money paid at *Stow* in *Gloucestershire*, according to the Condition, here the *Venire* shall not arise in *Hereford*, but in *Stow* in the County of *Gloucester*.

Note, if the *Venire* chance to arise out of three Counties, the *Trial* must be at *Bar*, unless it be upon two Issues.

If an Action upon the Statute of *Hue and Cry* be brought against a Hundred for a Robbery done within the Hundred, the *Venire* shall not arise in that Hundred where the Fact was done (for then they would be Judges in their own cause, which is against common Reason) but the *Venire* shall arise in the Hundred next adjoining; and to this purpose, the *Venire*

must be awarded specially, which is worthy observation.

Note, it must be by way of *Challenge*.

After the Issue joyned and entred, there may be several causes of *Challenge*, as where the Defendant is of *Kindred to the Sheriff*, either by blood or marriage, the Plaintiff may pray the *Venire Facias* may be directed to the *Coroners*, and if the Defendant agree thereto, it shall be accordingly. This must be specially awarded upon the Issue-Roll; and in the awarding of it, it must be set down and derived how the Sheriff is of Kindred, and then is the *Venire Facias* directed to the *Coroners*, called *A Challenge to the Sheriff*.

Challenge to the Array, is to the Jury at the Assizes properly, *Venire* in that case may be directed to the Sheriff.

You cannot make a *Challenge to the Jury*, till after that they are called, and before they are sworn, for afterwards it comes too late.

* If your Trial be by *Nisi-prisus* at the Assizes in the Countrey, and your Jury appear not full upon the Pannel, the Plaintiffs Council may crave a *Decem tales de circumstantibus*, ten of the standers by to fill up the Jury, or a less number, according as is requisite; which *Tales* must be mentioned upon return of the *Postea*, and the Judgement thereupon on the Issue Roll. See for this Co. Lit. 156.

These *Tales de Circumstantibus* be given by the Statute, 35 H. 8. cap. 6. And the Justices may award *Tales*, when only one Juror appears, *Dyer* 245. Co. lib. 10. 103. b.

And upon the Plaintiffs default, after the first Term the Defendants Attorney may bring the Cause to Trial, by *Venire Facias*, by Proviso.

Note, in *Replevin upon Avoir*, the Defendants Attorney may bring the Cause to Trial the first Term by Proviso.

If at the Trial of any *Nisi-prisus*, the Witnesses of the Plaintiff or Defendant will not voluntarily appear, without being served with the Process, to testifie the truth of their knowledge, in the matter or cause in question, then you may have a *Subpœna ad testificand.* for the said Witnesses out of the Prothonotaries Office, and therewith serve them, and compel them to appear, the Fee whereof is 2 s. 7 d.

You may have a *Subpœna* also from the Clerk of the Assizes, and it hath been adjudged a good *Subpœna* upon the Action grounded *S. Statute 5 Eliz.*

When

When you proceed unto your Trial, you must (having entred as before your Declaration, with the Issue joyn'd in the *Prothonotaries* Office) make out a *Venire Facias* upon your Issue, & get it signed with the *Prothonotary*, and having sealed it, you must get it returned by the Sheriff of the County or City where you lay your Action; and upon return thereof, you must also sue forth a *Habeas Corpora*, which is made by a particular Officer of the Court, call'd the *Clerk of the Juries*, & deliver the same to the Sheriff in due time, that so he may warn the Jury, and get the same returned before the Assizes.

Note, that if a Cause be brought to a Trial, and a *Habeas Corpora Juratorum* be deliver'd to the Sheriff who summons the Jury; and if you, for reasons best known unto your self, defer the Trial until some longer time, and afterwards you think fit to bring it again to Trial, you need not be at charge of a second *Venire Facias*, but may take a Copy from the *Custos Brevium* of your first Writ, if you keep it not in your hands, paying him for it 8 *d.* and for the search of it 5 *d.*

Upon which Copy or old Writ, the Clerk of the Juries will make you an *Alias habeas corpora*, or *Plures*, paying for it in Debt or Trespas,

10 *d.*

And in other Actions,

15, 6 *d.*

And for the continuance of it every Term,

4 *d.*

Then you must in suing forth your *Nisi-prisus*, ingross your Record in Parchment, *verbatim*, according to the Copy of the Issue made up, and the Entry of it upon the Roll, in the *Prothonotaries* Office, & then examine the same with the *Prothonotary*, if it be upon an Issue joyn'd the same Term, whose hand must be to it, and then carry the same to the *Clerk of the Treasury* for the time being, giving him such Fees for signing and making up the Records, as are hereafter specified.

But if the Issue were entred of a former Time, then must you deliver the Paper-book of the Issue to the *Clerk of the Treasury*, who will examine the same by the Roll, and make up the Record thereupon; which done, and the same signed by him or his Deputy, you must seal the same with the

*Note kept by the Clerk of the Treasury. Lord Chief Justice of the Court for the time being, who hath a Seal for that purpose, and then deliver the Record so sealed, together with the *Habeas Corpor. Jur.* returned by the Sheriff, to the Clerk of the Assize for the same County, where the matter is to be tried.

The

The general Fees in an *Action of Debt, Trespafs, &c* follow, as to making up the Record,

For the <i>Venire Facias</i> ,	2 s. 7 d.
For the <i>Return</i> thereof,	2 s. 4 d.
For the <i>Post-diem</i> thereof,	4 d.
For the <i>Habeas corpora Furator. and Expedition</i> ,	2 s.
For <i>summoning the Jury</i> ,	12 s.
If in <i>London</i> , or a <i>Corporation</i> , but	4 s. 4 d.
For signing the Record with the <i>Clerk of the Treasury</i> ,	
if the same exceed not 3 sheets,	2 s.
For every sheet exceeding,	4 d.
For examining the <i>Furat.</i>	4 s.
For writing the Record, for every sheet.	4 d.
For examining the same by the <i>Prothonotary</i> ,	1 s.
For the Seal,	2 s. 4 d.

Having thus procured your Record of *Nisi-prins*, you are to carry it at the time of the Assize, and deliver it into the Clerk of the Assize, and there pay the Judges Fee, having retained your Council, and your Witnesses being in readiness for the Trial of your Cause, according to the Issue.

The Fees you are to pay at the Assizes, are as follow :

For the Judges Fee in putting in the Record of <i>Nisi-prins</i> ,	11 s. 8 d.
To each Councillor you retain, at the least	10 s.
For reading the Record,	10 s.
For the Marshals Fees,	2 s.
For the Jury, eight pence a piece,	8 s.
To the Bayliff that keeps the Jury,	2 s.
For the Cryer,	1 s.
For the Oath of every Witness,	4 d.
For a Non-suit,	
For a <i>Tales de circumstantibus</i> ,	
For a privy Verdict,	
For a Warrant of Attorney, if the Attorney be absent,	4 s.

The Fees do somewhat differ by custom in several Counties: But if the Trial be had before the Lord Chief Justice of the Common-Bench in *London*, those are common Fees to be added unto the former.

For

For the Green-Cloth,

1 s. 6 d.

To the Bar-keeper, and Hall-keeper,

2 s.

To the Judges Groom, or Foot-cloth-man,

2 s.

To procure the Record to be read,

For Lights, if the Cause be tryed by Candle-light.

The Assizes ended, your Trial being had, and Verdict passed for your Client at the next Term following, you are to call for the return of the *Possea* from the Clerk of the Assize, and thereupon bring the same to the Prothonotaries Office to get costs assessed; for which end (if your charges have been extraordinary) you must bring a Bill of disbursements under your hand, other wise not, and thereupon cause Judgment to be entred. For the Entry whereof, the general Fees are as follow.

For the Return of the *Possea*.

2 s.

For signing the Costs,

1 s.

For Entering the Judgement if the Jury did fully appear,

2 s. 4 d.

If there were a *Tales*, then more

2 s.

For the Copy of the Judgement,

1 s. 4 d.

Having thus far proceeded, you may now procure Process and Writs of Execution, by *Capias ad Satisfaciendum*, *Fieri Facias*, *Elegit*, or otherwise, according to your desire, and as the nature of your Action brought doth allow or require: Wherein,

* *Cap. lay at Common-Law for the Kings Debt, but not at the Suit of the party, unless in Trespass. Qu. When.*

Note, that the * *Capias ad Satisfaciendum*, is the taking of the Body onely of the Party in Execution, till he satisfie for the Debt and Damages:

* *Elegit is given by the Stat. W. 2. cap. 18.*

* The *Fieri Facias* against the Goods onely, and the *Elegit* against the Moiety, or any one half of his Lands and Tenements, and all his Goods and Chattels, (his Oxen and Plough-Cattel onely excepted) To have and to hold the Goods as his own Goods; and the said Moiety of the Lands, until his Debt and Costs shall be fully satisfied and paid. But note this; that after an *Elegit* executed and filed, you can never have any other Execution; it being your own Election.

Note

Note also, that if you sue forth a Writ of *Fieri Facias* against the Goods of the Defendant, and by vertue thereof levy part of the Debt, and not the whole, then you may have afterwrrds a *Capias ad Satisfaciend.* against his Body, or an *Elegit* for the rest: But if you first imprison his Body by vertue of a *Capias ad Satisfaciend.* then you cannot have a *Fieri Facias* against the Goods, or an *Elegit*: If you have several Judgments against several men, for one and the same Debt, they being jointly and severally bound for the same, you may have two or three several Executions against them all, untill the Debt and Costs be satisfied by one of them, but cannot have the whole of every of them; and if the Defendant be in another County, and not to be found in the same County where the Action was laid, then you must sue forth a *Capias ad Satisfaciend.* into the same County where the Action was laid, and get the Sheriff to return upon it a *Non est inventus*) and then sue forth a *Testatum* into the County where he is to be found, and those Executions made immediately after Verdicts, &c. Judgments had upon them are made by the Clerks of the Judgments, in the respective *Prothonotaries* Office, who keep the Judgment-Papers, where they are transcribed.

We have now shewed you the course how to proceed to Trial, after Outlawry reversed on an appearance, in case the Defendant plead an issuable Plea, or indeed upon any other appearance made upon mean Process: Onely take notice of this, that if the Plaintiffs Action be just and right, and for good Debts or just causes of Action; the Attorney for the Defendant shall do well to counsel his Client to yield to Judgment, either by way of not being informed, Confession, or otherwise, so that he procure stay of Execution against his Client for such time as shall be agreed on by both Attornies, which must be carefully looked unto by the Attorney of the Defendant in time, before the Rule be out, and they take Judgment by Default: And this he shall do by putting his hand to the Plaintiffs Attornies Dogget-Book, in this manner.

Non sum informatus ita quod cessit Exec. usque Crastinum

Heref. ff Bridges pro Lacy.

Dowdswel pro Hunt,

} Per Dowdswel.

After

Note

* Formerly
the puisny
Judge did
tax the
Costs.

After which you draw up the Judgement short in Paper and carry it to the * *Prothonotary*, who is to tax Costs; and for that you pay him 3 s. 4 d. if in Debt upon one single Contract, and then you are to take it out, (the Plaintiffs name and the Defendants; and the Attorneys for the Plaintiffs, in the Judgement Book) after which you enter it upon some Roll of the Court in the *Prothonotaries* Office, and keep the Number-Roll by you to your Dogget-Book, that so upon any occasion you may have ready recourse to it; and the Plaintiff Attorney must be careful of keeping together the Copies of all his Judgements, that so when he hath occasion to renew them by *Scire Facias*, he need not be driven to take out new Copies, which are chargeable out of the Treasury.

And note, that in case the Judgement have continued above a year and a day, and no execution taken out, he must be put to renew it by *Scire Facias*; so he must likewise do, in case the Plaintiff or Defendant die, unless he hath from Term to Term sued forth Process, and filed it.

And in case of any Judgment had in Debt against an Executor or Administrator, you can have but a *Fieri facias* of the Goods of the Party deceased, in the hands of the Executor or Administrator; but if the Sheriff return upon your *Scire facias a devastavit*, then you shall have a *Fieri facias* of the proper Goods of the Executor or Administrator; and if the Sheriff return that he hath no Goods, you shall have a *Capias* against his Body, and after an *Exigent*, and so to the Outlawry after Judgement, if you please, in case you find him not easily to be arrested.

Note further, that you may have a *Capias* for the Costs, and in case of *ne unques* Executor pleaded, you may have *Fieri facias de bonis propriis*, if there be no goods of the Testator.

The course whereof is thus.

First then, he must have a *Capias ad satisfaciendum*, to be made for the Debt and Costs, if it be in Debt; or after Judgement had for Trespas for the Damages and Costs, as in the Judgment, which must be made into the same County where the Action was laid, and get the same returned by the Sheriff, with (*Non est inventus*, &c.) Then he must carry the same to the *Exigenter* of the same County, who will make an *Exigent* thereupon, which must be delivered to the

Under

Under-Sheriff to be executed and returned accordingly as
other *Exigents*.

Note, that in this Case there shall need no Proclamation
all against the Defendant, to give him notice thereof.

The *Exigent* being returned, you may sue forth the Process
of *Outlawry*, from the *Clerk of the Outlawries*, either *general*,
special, as in other Actions before specified: Whereupon
the Defendant, if he be arrested, cannot be discharged with-
out satisfaction to the Plaintiff, and reversing, or pardon of the
Outlawry; the Plaintiff also may bring an Action of Debt
on the Judgment.

The Fees to the Outlawry after Judgment, are as follow.

	s. d.
FOR the <i>Capias ad satisfaciendum</i> ,	1-1
For the return thereof,	0-4
For the <i>Post diem</i> ,	0-4
For the <i>Exigent</i> ,	1-7
For the return thereof,	0-4
For the general <i>Capias utlagatum</i> ,	0-11
For the special <i>Capias utlagatum</i> ,	2-2

Note, that in this Case you may have either generall or
special capias utlagatum, into as many severall Counties as you
desire, either in *England* or *Wales*; but observe further, that no
Process issuing, or to be made in or out of the *Common-Pleas*,
shall be directed or executed to or by any Under-Sheriff in
this, but onely *Elegits*, *Extents*, *Proclamations* upon the mean
Process as before; *Capias utlagatum*, general or special, or up-
on Outlawries after Judgment. If the Defendant be outlaw'd
after Judgment, if he cannot be arrested within a year and
day, yet the Plaintiff shall not need to renew the Judgment by
the writ of *Scire facias*; but otherwise, in case he be not outlaw'd,
must, as I before recited.

Note, if a man be taken upon an Outlawry after Judg-
ment, after the year and day, he is not in Execution for the
same without Prayer, *Co. lib. 5. 89.*

If Judgment be given in the *Common-Pleas*, and removed
by Writ of Error, and Judgment affirmed within the year,
the Court shall award Execution, and the Plaintiff is not put to his
trouble, *Co. lib. 5. 88.* against the Opinion of 14 H.

At the Common-Law when one had recovered after the year & day, he was put to a new account upon the Judgment and the *Scire facias* is given by the Stat. *W. 2. cap. 45.* But in all accounts a *Scire facias* did lye at Common-Law.

The manner of renewing the Judgment by Scire Facias.

First, the Plaintiffs must sue forth a *Scire facias* against the Defendant in the County where the Action was laid, directed to the Sheriff, to give notice to the Defendant to appear and shew cause why the Plaintiff should not have Execution against him, for the Debt and Costs formerly recovered. To which Writ, if the Defendant can shew any good cause of Release, Satisfaction, or any other just cause or sufficient charge, then he may appear, and plead in Bar his Discharge.

His appearance must be entred into that *Prothonotaries Office* out of which the *Scire facias* was made.

If the Defendant, upon return of the same *Scire facias*, not forthwith appear and plead, the Plaintiff shall have present Execution against him.

But if the Defendant, after the said Judgment obtained before satisfaction of the said Debt dye, unless the Plaintiff procure a *Scire feci*, &c. to be returned upon the *Scire facias* against the Executor or Administrator, then the Plaintiff must sue forth a second *Scire facias* against the Executor or Administrator of the Defendant; and upon their second default, the Plaintiff shall have present Execution against them, having after the return of the said *Scire facias*, taken out, and given a Rule in Remembrance in the *Prothonotaries Office* in this manner: *Nisi defendens aliquid allegaverit retardationem executionis Judicii præd. die Mercurii prædicti Clausum hujus Terminij intretur Judicium per default. Per*

Note, that these several Writs are to be made and sent forth together with Execution, in and out of the *Prothonotaries Office*, and where the first Judgment was entred. And the said Writs of *Scire facias*, together with the new Judgment had thereupon, to be entred upon Record in the same Office, and the Writs carefully filed with the *Original Brevium*.

The Compleat Attorney.

35

The several Fees are these.

For search in the <i>Dogges</i> for the Number-Roll,	4 s.
For search in the <i>Treasury</i> ,	4 d.
For the Copy of the <i>Judgment</i> usually,	2 s.
For the Clerk for making the Writ,	8 d.
To the <i>Prothonotary</i> for signing of it,	1 s. 4 d.
For the Seal of it,	7 d.
For the Return with a <i>Nichil</i> ,	1 s.
For the Return with a <i>Scire feci</i> ,	2 s.
For entering the <i>Judgment</i> upon default, upon one <i>Scire</i>	
<i>facias</i> ,	2 s. 4 d.
If upon two <i>Scire facias</i> ,	4 s.
For the Copy,	2 s.
For taking the <i>Writs</i> into a Remembrance,	1 s.
For the Rule,	4 d.
For a Warrant of Attorney,	8 d.

Upon these Proceedings duly and truly performed, the Plaintiff may have Execution against the Defendant; by *Capias* *satisfaciendum*, by *Elegit*, or otherwise, at his pleasure (as before told you in Writs of Execution:) And if the Defendant be dead, then there shall issue against the Executor, a *facias de bonis testatoris*.

Quare executionem de bonis testatoris habere non debet, &c.

The Executor in such case cannot plead *plene administravit* generally.

Hus far having proceeded in Debt against the Defendant himself, his Executor, or Administrator either by way of *facias*, or otherwise; we now proceed to Prosecution, to Judgment and Execution upon Special Bail; wherein observe the Rules following.

The Defendant be arrested by mean Process, as *Capias*, *facias*, or *Plures*; and the Plaintiff holdeth him not sufficient answer the Debt or Damages contained in the Writ, the amounting to 20 l. or upwards: In this case the Plaintiff upon the return of the Writ (by entering a *no recipiat* with *Pluriger*, out of whose Office the *Capias* did issue) may Special Bail to be put into his Action, which the Defendant must put in before some Judge of the Court where Cause depends, who will accept of such Bail as the validity

or weight of the Cause doth require, or in his Discretion shall be thought fit.

If the appearance be upon Arrest by the *Capias*, *Alias*, or *Plures*, then the Bail must be taken and entred by the *Philiz* of the same County where the Action was laid, and who made the said Process.

But if the Defendant be arrested in the *Mayors*, *Bayliffs*, or *Sheriffs Court*, of any City or Corporation, and the Defendant by any Writ of Priviledge, or *Habeas Corpus*, do remove the same out of the same Corporation, to be tryed at Common Law above.

Note, upon such Process Bail is requirable, of what nature soever the Action be.

Then the Bail being taken by any Judge of the same Court must be entred in the same *Prothonotariss* Office, where the said Writ of Priviledge, or *Habeas Corpus* issued and was served out.

The Defendant being as aforesaid bailed, must bring a new Order within two Terms following, the one of which is that wherein the Bail was taken, unless it was taken the last day of the Term, and declare against him, the Plaintiff, the nature of his Cause or Action shall require, observing the same form and manner in every respect or point, to procure Judgment and Execution by way of *Nihil dicit, non sum infortunatus*, *Confession of the Action*, Triall by *Nisi prius*, or otherwise, as is formerly set down and expressed by *Superfedeas*.

And the Plaintiff having obtained Judgment against the Defendant, and perceiving that he is not easily to be arrested and taken in Execution, or not sufficient to satisfy the same, but knoweth the Bail to be better able, then the Plaintiff may at his choice leave the Defendant, and prosecute the Bail in this manner following.

FIRST, The Judgment being entred, he must sue forth Execution by *Capias ad satisfaciendum* against the Defendant, directed to the Sheriff of the same County where the Action was first laid, and upon the return thereof, get the Bail returned by *Non est inventus*, then he must procure a Writ

* *Scire facias* against the Bail, to shew cause why the Plaintiff

* Note,

The *Scire Facias* must issue to the Sheriff of the County where the Cause was, Vid. Hob. 4. and 196.

tiff should not have Execution against them, according to the Recovery or Judgement so had against the Defendant, upon which Writ, if the Sheriff do return a *Scire feci*, then there needs no second Writ to be made; but if he return a *Nihil*, then there must be a second Writ of *Scire facias*; which being returned likewise with a *Nihil*, then the two Writs of *Scire facias* must be taken out upon Remembrance in the *Prothonotaries* Office, with the Returns of them, and Rules thereupon given, and filed accordingly with the *Custos Brevium*; and thereupon, if the Bail shew not cause to the contrary, Judgment by Default shall be entred against them in the said *Prothonotaries* Office, for the Sum in which they became Bail as aforesaid; whereupon the Plaintiff may take Execution out against them, either by *Fieri facias*, or *Elegit*, but not by *Capias ad Satisfaciendum*, because it is against the Tenor of the Bail.

And in this case observe, that the Plaintiff may likewise sue and arrest the Bail going by way of Original at the Common Law, for the Sum for which they became Bail, and arrest their Bodies, either upon the *Capias*, *Alias*, or *Plures*, or sue them to the *Exigent* thereupon, and declare upon the said Recognizance, using all Proceedings therein as in an Action of Debt; but in this the Action must be laid in the County of *Middlesex* only, where the Records do lye, and whence the *Venire* out of that respect must rise.

And if the Bail cannot be arrested in the County of *Middlesex* upon a *Capias*, &c. you may return (*Non est inventus*, &c.) and sue forth thereupon a Writ of *Testatum*, and by that means arrest them in any other County where they may be found, observing all the Proceedings, as in Action of Debt.

WE have now shewed you how to proceed against the Bail, as well as against the Defendant himself; we come next to shew you how to prosecute a Writ of Error, and reverse Judgment thereupon, (which is not so absolutely taken away, as most men conceive by the late * Statute) but that still * *This is in* if there be substantial matter of Error to be allowed of the *tende d the* Court, it holds good after Verdict, and is not at all taken *Stat. made* away in Judgment upon *Nihil dicit*, &c. 13 Car. 2.

And there are various causes of reversing an Outlawry, as *Qu. The* we formerly shewed, so some of them may serve to reverse a *dase of the* Judgement, which I shall here particularly relate. *Stat.*

After a Judgment had and recovered by (*Non sum informatus*) Confession or otherwise: (if it be not by Triall of *Nisi prius*) these *Causes of Errour*, or any of them being duly found, may serve to reverse, and make void the same.

First, if there be any material difference or variance between the Additions in the Original, or the Process of *Capias*, *Alias*, *Plures*, and *Exigent*, and the Judgment, which is warranted by them; this is good cause of Errour.

Secondly, if the Debt demanded in the Process, or either of them, and the Debt in the Judgment recovered do not agree, but are different, this is good cause of Errour.

Thirdly, if the Writ be not ordinarily and duly returned and filed with the *Custas Brevium*, there is a just cause of Errour.

These may be filed up on motion, before your assign. Fourthly, if there be not Warrants of Attorney duly filed and put into the Office according as the cause requireth, and one for the Plaintiff upon suing forth of the Exigent, or upon the Entry of the Judgment, there is good cause of Errour, for which you are to make search with the Clerks of the Warrant for the time being.

And for these, and all other Errours, you are to search and get Copies of the Writs from the *Custas Brevium*, and observe diligently both them and their Returns, and confer them with the Judgment, as it is entred upon Record in the *Prothonotaries* Office, where you are to take your Number-Roll out of the *Doggets* to that purpose, that so you may go readily to the Treasury. *Qu* Divers other Causes of Errour.

See for this in a strange case in Hob. 68. Fifthly, if the Defendant be arrested by a Writ of *Testum* in a Foreign County, and no Writ of *Capias ad satisfaciendum* returned against the Defendant with a *Non est invenitum* in the same County, where the Action was laid and filed with the *Custas Brevium*, that is good cause of Errour in the Execution, but not in the Judgment.

Now being informed of the causes of Errour, and that the Defendant be not arrested and taken in Execution, but would avoid the same, then must he proceed as follows.

In the first place, having the Number-Roll, he shall do well to get a Copy of the Judgment, with the Additions of the Party Defendant, and of the Debt and Costs of Suit literally as it is entred upon the Record.

The *Prothonotaries* Office, as I formerly told you, is the place where you are first to resort, and there to the *Dogget*

house, to find out your Number-Roll in the Doggets of that Term, when the Judgment was entred: and having found the Cause, take the Number-Roll, and then repair to the Records of the Treasury at *Westminster*, and so to the Roll, and take a true Copy of the Judgment in all things, as above.

Then carry the same, or a Copy of the Precipe, Debt and Costs, to the Cursitor of the same County where the Action is laid, who thereupon will make you a Writ of Error, for which you pay 2 s. 6 d.

Then you must go with the Writ of Error to the Clerk of the Errours for the time being, who will take out the Judgment with the Debt and Costs of Suit in his Book of Remembrance for Bail, and be sure you carry with you good Sureties, such as the validity of the Cause doth require. Note, that Bail is requirable upon a Writ of Error *per stat 3 Jac. cap. 8.* in Debt upon a single Bond, without condition for payment only, or Rent or Contract.

Thereupon your Sureties, together with the Writ, must be brought to the Lord Chief Justice of the Common-Pleas for the time being, and there enter Bail in a Recognizance, together with the Defendant, in double of the Debt, that the Defendant hath good cause of Error, and shall follow the same Writ with effect: and if the Defendant shall happen to be condemned therein, and not able to prove sufficient Error therein, then that the Defendant shall pay the condemnation therein, with further Costs of Suit, such as shall be allowed, or they the Sureties for to do the same. To this the Judge subscribeth his hand, and thereupon giveth Warrant to the said Clerk of the Error, to make *Superfedeas*, one, two or more, as the Defendant for his Indemnity, or safeguard from Arrest, shall require, which Writ or Writs the Defendant is to allow, with the Sheriff of the same County or Counties, where he standeth in danger or fear of Execution before he be arrested, or the said Execution executed, either upon Body or Goods, or else the said *Superfedeas* is of no force, nor can be allowed, whereof the Defendant is to have special care, that he have it in an early manner.

And this may be done as well in the Vacation, as in the Term-time, if the Defendant be not arrested, or have his goods taken in Execution, by vertue of the said Judgment.

But if the Defendant be taken in Execution before the *Superfedeas*

perſedeas be procured, then the *Superſedeas* comes too late; for the Defendant ſhall not thereupon be releaſed, but muſt continue in durance, until ſuch time as the Judgment ſhall be reverſed by the ſaid Writ of Error in the *Kings-Bench*.

For reverſal whereof, he muſt not onely ſue forth his Writ of Error, as above, but alſo cauſe the whole Record of all the Proceedings from the Original, and the beginning of the ſame Cauſe (if Error be not found in the Entry of the Judgement it ſelf) to be certified by the ſaid Clerk of the Errors out of the *Common-Pleas* into the *Kings-Bench*, and aſſign cauſe of Error there. Note, the Original muſt be certified by the *Cuſtos Brevium* by force of a *Certiorari* in that behalf directed to him out of the *Kings-Bench*.

The Record being thus certified, and Error aſſigned upon the return of the ſaid Writ of Error, he is to take Copy thereof: And thereupon ſue forth a Writ of *Scire Facias* to the Plaintiff in the Action to hear Errors.

To this the Plaintiff if he ſee cauſe may appear and plead, and the moſt uſual and common Plea there is, that the Record is nothing erroneous.

The Plaintiff having ſo pleaded, and willing to have the ſaid Error argued, and the Judgement confirmed as cauſe ſhall require.

The Defendant, according to his Recognizance, muſt follow the ſame with effect, or elſe he will be condemned therein.

The Defendant is then to labor for a day, to be given for the arguing of the ſame Errors, if the cauſe ſhall ſo require.

But if the Defendant do delay the Plaintiff, the Plaintiff may ſue forth two *Scire Facias* againſt the Defendant, to ſhew the cauſe why he ſhould not have Execution: And if at return of the ſecond *Scire Facias* Errors be not aſſigned, Judgement ſhall be confirmed for the Plaintiff.

Note, that in this Caſe, upon a Writ of Error brought upon a Judgement had in the Court of *Common-Pleas*, and

returned into the *King-Bench*, the Proceedings thereof muſt be onely in the *King-Bench*, to which Court, and to no other, it doth properly belong after it is thither returned.

* By ſuch a means a reall Action may be removed out of the *Kings-Bench*, 2 Inſt. 23.

But a Writ of Error upon a Judgment had † in the Kings

*This by the Stat. 17
liz. cap. 8. and see
here in what Actions,
and for what causes.*

Bench must be returnable in the Exchequer-Chamber; and the cause of Error is onely heard and determined before the Lord chief Justice of the Common-Pleas, the Lord chief Baron of the Exchequer; * And the rest of the Judges and Barons, who are of the Coif of those two Courts, and not before the Justices of the Kings-Bench, where the cause formerly depended, and received its Judgement.

* Which Justices and Barons, or any six of them, being of the Coif, have power to examine, &c.

If the Error be found, and allowed by them to be sufficient and good, then the said Judgment is by their full Confession and Judgment to be reversed and made void.

But take notice, that notwithstanding the reversal thereof, it takes not away the Plaintiffs cause of Action; for the Plaintiff may commence a new Action against the Defendant for the same cause, if he so think fit. Note further, he shall take advantage of his first Action, in case of the Statute of Limitation pleaded, if he commence his Suit again within a year and a day.

If the Errour be not found good and allowed, then is the former Judgment affirmed, and further Costs for Execution allowed to the Plaintiff, who may presently sue forth Execution out of the same Court where the Judgment was obtained, either against the Defendant or his Sureties, as he thinks best, and prosecute against them either by *Scire Factas*, &c. as in the case of special Bail, as above, or by an Action of Debt: But if any Writ of Errour be sued in any other Action than an Action of Debt, no Bail is required.

The Fees in this case are very uncertain, and cannot be expressly set down; but the Heads of them, according to their Proceedings, are as follow.

- For search of the Record to finde the Error.
- For the Copy of the Record.
- For the Writ of Error.
- For the Lord Chief Justice's Fee.
- For putting in Bail.
- For certifying the Record.

For

For assigning *Causēs of Errour.*
 For an *Habeas Corpus.*
 For the *allowing.*
 For the *Return.*
 For the *Supersedeas.*
 For the *Copy of the Writ of Errour.*
 For drawing *Diminution*, if need require.
 For the *Copy thereof.*
 For *entring the Errours*, and *Plea.*
 For a *Certiorari*, if need require.
 For a *Certificate* from the *Custos Brevium.*
 For *entring the same*, and *Diminution.*
 For the *Warrant of Attorney.*
 For the *Copies of the Books* for the *Judges.*
 For *Counsellors Fees.*
 For *affirming the Judgement.*
 For the *Copy thereof.*
 For the *Scire Facias*, and *entring.*
 For *filing and returning.*
 For *Attorneys Fees.*

Cum multis aliis quæ nunc, &c.

Note, That if upon any Judgment recovered and had against the Defendant, he be taken in Execution, or have his Goods taken, or his Land extended for the same, and upon full payment, or satisfaction of the Debt and Costs, the Plaintiff either in person or by his Attorney, do acknowledge satisfaction upon Record in the said Court wherein the Judgment was entred; and if the Defendant at no time, from thenceforth or after, make a Release of Errours to the Plaintiff, and that there be good cause of Errour found in the said Judgment, the Defendant may bring a Writ of Errour upon the said Judgment; and upon arguing thereof, (as before the Errours being allowed by the Judges, and the Judgment thereupon reversed) the Defendant may sue forth a *Writ of Restitution* against the Plaintiff, and recover back again the full Debt and Costs of Suit specified in the said Judgment; but if he hath made Release, he is void of remedy.

And take notice further, that if there be a Judgment had and recovered against the Defendant by way of *Nisi prius*, and Verdict of Twelve Men, then unless he can find some cause in the Original, on the entring or giving of the said Judgment

after

After the Verdict so given and had, he may be admitted to sue
forth a Writ of Error, but get no advantage thereby; for by
many Statutes, and particularly the Statute of *Jeofailes*, many
great Faults, Misprisions, or causes of Errour, had or commit-
ted in the prosecution of the said Cause before the said Ver-
dict, are taken away.

Observe further, that if the Defendant be outlawed after
Judgment, and there be good cause of Error to be found, as
well for or in the said Judgment as Outlawry, the Defendant
may bring a Writ of Error, and be bailed for both; and have
Superfedeas, as well for the safeguard of his Body as his
Goods, before they be arrested or taken for the same. Note,
this is intended of a Judgment by Confession or Default be-
fore Trial, else *Superfedeas* lyes not.

Now because we have omitted to speak of acknowledging
Satisfaction where the Debt is satisfied and Judgment had,
whereby the Defendant, in case the Satisfaction be not ac-
knowledged, may be in danger of paying twice one and the
same Debt, therefore observe the ensuing Rules.

When you are to acknowledge Satisfaction, be sure to have
a sufficient Warrant for it from your Client, and likewise let
the Defendant seal a Release of Errours for the reason before
alleged.

If it be in Term-time, get the Cryer to bring the Roll into
Court, and lay it before the *Secondary*, with the cause ready
before him, and pray him to enter Satisfaction. which the *Se-
condary* of that *Prothonotary* in whose Office the Cause was
entered, will do, you paying the Fees as follow.

Note, if the Plaintiff be dead, you must produce a Will
proved, or Letters of Administration.

To the Cryer for bring in the Roll,	6d.
To the Box, if the Debt be not above 40 l.	6d.
If above 40 l. for every 100 l.	1 s.
To the <i>Prothonotary</i>	2 s. 4d.
To the <i>Secondary</i>	4d.
For the Attorneys Fee.	3 s. 4d.

Having gone thus far in Action of Debt, it rests now that * which is
we should speak something of a *Wager at Law*, * which is a *peculiar so*
plea usually by the Defendant, where an Action of Debt is the *Law of*
ought against him, either for Money lent, or upon a Book-England,
etc. or upon Detinue, or any other Action of Debt, which is 2 Inst. 45.

not

not grounded upon Specie alty (unless it be where an account hath formerly been before Auditors) in all which Cases a Defendant may wage his Law, and there are two ways of waging Law. Note, it ought to be *Duodecima*; and *Magn. Chart. cap. 28. saith sine testibus fidelibus, 2 Inst. 44.*

Note, in account before an Auditor, the Defendant may wage his Law, for 'tis out of the Statute of *W. 2. cap. 11.* but if the Account be before Auditors according to that Statute they are Judges of Record, and therefore the Defendant cannot wage his Law, *2 Inst. 380. 20 H. 6. 16.*

The first is called *Lex instantur*, which is when your Client will presently upon pleading come into Court, and swear that he oweth or detaineth nothing, in which case it behoves you to have your Client ready at the time when you plead; and the next day, or second, bring him into Court, and let him wage his Law; in which case the Plaintiff cannot become non-suit, but upon a Wager at Law, at a day assigned, he may be non-suited.

Formerly the Plaintiff needed not to have had his Count recorded, and then upon a *Lex instantur* he might have been non-suit, *2 H. 4. 13.* but upon a *Lex instantur* the Plaintiff may imparle until a day in another Term, *3 H. 4. 2.* *Brook Title Ley Lager 85.* makes a *Quere*, if it be the use at this day, *vid. 3 H. 6. 49, 50.*

Note, *Lex instantur* cannot be after a general Imparlance nor doth an Essoin lye in the case, *vid. H. 6. 13.*

For the other kind of Wager of Law; which is *Lex ad diem* where a day is assigned, there is to be given fifteen days at the least after the Law pleaded for doing thereof, that is, fifteen days after the coming in of your Imparlance; at which time, if your Client be not ready to do his Law, he may be essoined (that is, excused for that time) and have a longer day to do it, which you must do upon the Essoyn day of that return wherein your Law should have been done in Court.

Note, that the Plaintiff's Attorney must ever look on the days of Exceptions, in case there be no Essoyn cast to enter a *Ne recipiatur*; but if there be an Essoyn cast, then to adjourn it, and to look to the continuances, as this, and the nature of the Actions the Essoyns are cast in, require.

Note further, that upon an Essoyn cast, if it be not adjourned by the Plaintiff, he may be non-suited, as is before shewed.

If an Effoyn be cast where it will not properly lye, you may have it dissolved, which is called *Quashing*, which shall turn the Defendant or Tenant default.

Note, the Tenant or Defendant may (for the most part) be Effoyned, upon every Original Writ before appearance, with cause or without cause, whereby doth ensue great delay to the Plaintiff, and sometime the Defendant may be Effoyned after an Effoyn in Action real (of which we shall hereafter treat more at large by it self.) The Tenant for life, at the return of the Original Writ, may be Effoyned, and then the Defendant must adjourn the same, wherein must be given common days of return, and at the day given by the Effoyn, the Tenant may demand the view, wherein must be given other days of return, and at the day of view, the † Tenant may be Effoyned again, and then he may pray in aid of him in the Reversion, and at the return of the Summons *Ad Auxiliand.* he that is prayed in aid, may also be Effoyned for nine Returns, at which time the first * Tenant may be Effoyned again: And all these delays the Tenant may inforce the Defendant to suffer

† I think the Effoyn upon the view is, for the Attorney, vid. H. 46.

* It is true in case of voucher, Hob. 46.

Note, that in all real Actions upon the Summons, the Tenant may be adjourned by the Demandant unto the ninth return following inclusive: but of this more in its proper place.

The Fees incident to the Wager of Law and Effoyns, Exceptions and Adjournment, follow in a Table amongst other Fees.

Note, that many of these Actions of Debt are brought in inferior Courts, as in the Sheriffs or Mayors Court in London, and in other Corporations, where they hold Plea by their Charters for very great Sums, where the Defendant for delay or otherwise, doth usually bring a *Habeas Corpus*, or Writ of Priviledge, which doth remove the Body (if in prison) together with the Cause.

This *Habeas Corpus*, or Writ of Priviledge, must be made by one of the *Prothonotaries* Clerks, and must be signed by one of the Judges of the Court, and after by the *Prothonotary*, and after sealed and carried under Seal, and delivered to the Judge or Steward, or other Officer in chief of such inferior Court where the Cause is depending; where, upon allowance of it, they return it, and certify the causes; which done, he that brings

brings the *Habeas Corpus* must put in Bail above, before the Judge most usually that signs the Writ, such as the Judge shall approve of, when he sees what the causes are.

But if the Party do not appear at the return of the first Writ, and put in good Bail in some short time (for they can not put in common Bail, though the Action be never so small) you may have a *Procedendo* to carry back the cause to the Court below from whence they are removed thereby to be proceeded unto Judgment.

See for these *Procedendo's* good Directions by the Statute 21 Jac cap. 23.

The Fees of a Habeas Corpus are as follow.

Qu. These Fees.

To the Clerk for the Writ	5.	Aliner
To the Prothonotary for signing it	6.	
For the Seal	1.	Aliser.
To the Judge for his hand thereunto	1.	
For the Attorneys Fee	3.	Alabor
For allowing the Writ	1.	Alabu
For the return of the first Cause	2.	
For every other Cause	1.	Alerte
For a Bill of <i>Multas Causas</i> , if in London, for search	0.	
To the Serjeant, if in London, for his Fee at least	10.	Alisb
For putting in Bail before the Judge, for the first Cause	10.	Andew
For every other Cause	3.	Appul
To the Prothonotary for filing the Bail for the first Cause	6.	Arum
For every other Cause	1.	
For the Attorneys Fee	3.	Avena

Now because there are many miscarriages in these *Habeas Corpus's*, whereby the Writs themselves become unuseful, in being not allowed, all which proceeds most usually from the mistake of Title of the Corporation or Court to which it is directed, I have thought fit to insert the Titles of the most Corporations throughout England, as follows Alphabetically.

Abenden.

A

- Abendon.* Majori & Ballivis Villæ de *Abendon* & eorum cuilibet
Abbington. Majori Ballivis & Burgens. Burgi sui de *Abbington*
 & eorum cuilibet salutem.
- Aburgavenny* Senescallo & Ballivis *Henrici Nevil* Milit. Dom. *Abur-*
in Com. Mon. gavenny, Villæ suæ de *Aburgavenny.*
- Adven.* Majori & Ballivis Villæ nostræ de *Adven.* & eorum
 cuilibet.
- Cur. Admirat-* J. P. Supremæ Cur. Admiralitatis *Anglia* Marr. ejusve
hant. Deputat. legitimus ibidem.
- St. Albanes.* Preclarissimo C. H. Magno Admirallo nostro *Anglia,*
 sive ejus locum Tenenti, aut Deputat. Senescallo Cur.
 nostræ de Record Tenent. infra Burgum Sancti *Albani* in
Com. Hertf.
- Aliter.* Senescallo Cur. de Record. Burgi nostri Sancti *Albani*
 in *Com. Hertf.*
- Aliter.* Majori & Burgensibus ac Senescallo Cur. nostræ de
 Record. Ipso Senescallo infra Burgum Sancti *Albani* in
Com. Hertf. & eorum cuilibet salutem.
- Aldboroug.* Ballivis Villæ de *Aldboroug* salutem.
- Aldburges.* Senescallo Manerii nostri de *Aldburges* in *Com. Ebor.*
 salutem.
- Allerton* Ad Curiam *Thoma* Com. *Exon.* Manerii & libertatis
 suæ de *Allerton* in *Com.*
- Alisbury.* Ballivis Villæ suæ de *Alisbury* in *Com. Buck.* salutem.
- Andever.* Ballivo & Burgens. burgi sui de *Andever* in *Com. North-*
hampt. salutem.
- Appulby.* Majori Burgi sui de *Appulby* in *Com. Westmerland.* sa-
 lutem.
- Arundel.* Majori & Burgens. Burgi sui de *Arundel* in *Com. Sus-*
sex. salutem.
- Avendon.* Majori & Ballivis Villæ nostræ de *Avendon* in *Com.*

B.

- Badbury.* AD Hundred. Mountjoy Blunt Dom. Mountjoy de
Badbury in *Com.*
- Banbury in* Majori aut ejus Deputat. uno Aldermano, Recordatori
Com. Oxon. vel ejus Deputat. duobus Capitalibus Burgens. Burgi de
Banbury, in *Com. Oxon.* vel tribus eorum salutem.
- Banbury.* Ballivis *Lanceloti* Episc. *Lincoln.* Cur. suæ de *Banbury.*
Barnsley

- Barnsley cum Dadwerth.* Ad Cur. Manerii de *Barnsley cum Dadwerth* in Com.
- Barnsley.* Ad Cur. Manerii nostri de *Barnsley* in Com.
- Barnstable.* Majori Aldermanis & Burgenf. Burgi five Villæ de *Barnstable*, alias *Barstable*.
- Barwick.* Majori Villæ *Barwick* super *Twedam*.
- Bath.* Majori Aldermanis Recordat. & Justic. Civitat. nostre *Bathon*.
- Bathon. Civit.* Majori Recordatori Aldermanis & Justic. Civitatis *Bathon* in Com. *Somerset*, & eorum cuilibet salutem.
- Aliter.* Majori Justic. ac Recordatori Civitatis *Bathon* salutem.
- Bathon. Episcopo.* Senescallo five Ballivo Cur. suæ de placitis ad reverendum in Christo patrem Dom. N. permissione divina *Bathon & Wellen* Episcop. pertinen. five concess. Tenent. apud *Guild-Hall* infra Burgum & Villam nostram de *Welles* in Com. *Somerset*. salutem.
- Battel.* Senescallo & Ballivis *A. Brown* Milit. Dom. Vic. *Montague* libertat. suæ de *Battel* in Com. *Suffex*.
- Bedford.* Majori Aldermanis Burgenf. & Recordator. Burgi five Villæ de *Bedford*.
- Bedwyn magna.* Portgreve Ballivo & Burgenf. Burgi sui de *Bedwyn* in Com.
- Bereafston.* Majori & Burgenfibus Burgi sui de *Bereafston* in Com. *Devon*. salutem.
- Beverley.* Majori & Gubernatoribus Villæ nostræ de *Beverley* in Com. *Ebor*.
- Beverly.* Majori Gubernatori & Burgenf. Villæ suæ de *Beverley* eorum cuilibet.
- Beverlacy.* Majori Recordator. & Gubernatoribus Vill. *Beverlacy*.
- Burgus de Bewdley.* Ballivo & Burgenf. Burgi nostri de *Bewdley* in Com. *Wigorn*.
- Bewdley.* Ballivo & Burgenf. Burgi sui de *Bewdley* in Com. *Salop*.
- Bidysford.* Majori Aldermanis Burgenfibus & Recordatori Villæ suæ de *Bidysford* in Com. *Devon*. salutem.
- Blechlinly.* Burgenfibus Burgi sui de *Blechlinly* in Com. *Surrey* salutem.
- Blandford Forum.* Ballivo & Constabulariis Burgi sui de *Blandford Forum* in Com. *Dorset*. salutem.

Com.

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- iter.* Ballivis & Constabulariis Burgi sui de Blandford Forum in Com. Dorset parcel. Ducatus sui Lancastr. salutem.
- admyn jam* Majori & Communi Clerico Burgi nostri de Bodmyn in Com. Cornub.
- Badmyn.* Senescallo Burgi nostri de *Borrowbriga* in Com Ebor. parcel. Ducat. nostri Lancastr. salutem.
- Borrowbriga.* Ballivo & Burgensibus Burgi sui de Bostyn in Com. Cornub.
- ossyn.* Majori & Burgensibus Burgi nostri de Sancto Botolpho in Com. Lincoln.
- oson in Com* Majori & Burgensibus Burgi sui de *Brackley* in Com Northampton. salutem.
- incoln.* Majori & Communitat. ac omnibus Civibus Civitatis London necnon Gubernator. possession. de *Bridewel & Sanct. Thoma Apost.*
- Brackley.* Ad Cur. W. E de *Bridge-house* in Com.
- ridewel.* Ballivis & Burgensibus Villæ nostræ de *Bridgenorth* & eorum cuilibet.
- ridge house.* Ballivis & Burgensibus Burgi sui de *Bridport* in Com. Dorset. salutem.
- Bridgenorth in* Majori & Ballivis Villæ suæ de *Bridgewater* salutem.
- lop. Bruges.* Majori Aldermanis ac Vic. Civitatis. five Villæ *Bristol* ac Majori & Constabular. staple ejusdem Civitatis five Villæ necnon Ballivis Majori Communitat. ejusdem Civitatis. five Villæ Cur. suæ Toll. ac Ballivis dict. majoris & Communitat. ejusdem Civit. five Villæ Cur. pedis pulverizat. & eorum cuilibet salutem.
- idport.* Ad Cur. F. Ep. de *Branchard Forren* in Com.
- idgewater.* Ad Hundred Johannis D. Manerii sui de *Brownshol* in Com.
- istol.* Ad Cur. H. C. Militis Manerii sui de *Bruswick* in Com.
- anchard.* Ballivis & Burgens. Villæ suæ de *Buck* in Com. *Buck* salutem.
- Brownshol.* Ballivis & Senescallo T. Paget Dom. Paget. Burgi sui de *Burton super Trent* & eorum cuilibet.
- Bruswick.* Aldermanis Recordator. & Capital. Burgensibus Burgi nostri de *Bury Sanct. Edmund.* in Com. nostro *Suff.* & eorum cuilibet.

C.

- Calne.* **C**onstabulario & Burgensibus Burgi sui de *Calne* Com.
- Camelford.* Majori & Burgensibus Burgi sui de *Camelford* in *Com. Cornub.*
- Cancellario Anglia.* Prædilecto & fideli suo *A. B.* Cancellario suo *Anglia*
- Cantabr. Universitas.* Procancellario Universitatis *Cantabr.* salutem.
- Cantabr. Villa.* Majori & Ballivis Villæ *Cantabr.*
- C Cantuar.* Majori Civitatis *Cantuar.* (unde quære)
- Cur. Palatii Archiepiscopi in Cantuar.* Senescallo Libertat. *Gilberti Dom. Archiepiscopi Cantuar.* Cur. Palatii sui infra Civitat. *Cantuar.*
- Aliter.* Senescallo Cur. Palatii Dom. Archiepiscop. *Cant.*
- Christi Ecclesia Cantuarien.* Senescallo altæ Cur. Decani & Capituli Ecclesiæ *Cantuar.*
- Cantuarien.* Reverendissimo in Christo Patri *G.* Providentia *Cantuar.* Archiep. Primat. & Metropolitano, Ac supremis Commissionar. Reg. ad causas Ecclesiasticas inter alios sub magno sigillo *Anglia* legitimè sufficienter autoritat.
- Caresbrook.* Clarissimo consanguineo suo *H* Com. *Southamp.* Stabulario castræ sui de *Caresbrook* in Com. *Som.* vel ejus locum-tenenti. Ac Portatori sive ejus Dat. ibidem.
- Carleil.* Majori & Ballivis Villæ de *Carleil* in Com. *Cumb.* & cuilibet salutem
- Carlisle.* Majori & Ballivis Civitat. *Carlisle* salutem.
- Carllick Civitas.* Majori & Ballivis Civitatis *Carllick* in Com.
- Carlington.* Majori & Burgensibus Burgi sui de *Carlington* in Com.
- Carlion.* Ad Cur. *W.* Comit. *Pembrook* de *Carlion* in Com.
- Carlyon.* Majori & Ballivis Villæ de *Carlyon* & eorum cuilibet.
- Carnanton.* Senescallo & Ballivo Manerij sui de *Carnanton* in *Com. Cornub.* salutem.
- Carvice. Carpi-on.* Majori & Ballivis Villæ de *Carvion* in Com.
- Castle-Rising.* Majori & Burgensibus Villæ suæ de *Castle-Rising*
- Castri Episcopi villa in Com.* Ballivo & Burgensibus Villæ *Castri Episcopi* in *Com. Salop* salutem.
- Salop.*

- Castri Novi* Majori & Burgenfibz Burgi sui Novi Castri subtrus *Linam*
subtrus Linam. in Com, *Staff.* salutem.
- Castri novi* Majori & Villæ Castri novi super *Tinam* in
super Tinam. Com. *Northumb.* This was lately made a County Palatine,
 (unde quære.)
- Cestr. l.* Carolo Principi Wallie, Duci *Cornub* Comiti *Cestr.* &
Flint, filio suo c'a iſſimo sive ejus Camerario Civita-
tis Palatini Cestr. vel ejus locum-tenenti ibidem.
- Aliter.* Camerario Com. Palatini nostri *Cestr.* seu ejus locum-te-
 nen ibidem salutem.
- Cestr. Civit.* Majori & Civibus Civitat. *Cestr.* in Com. Palatin.
Cestr.
- Chayford* Præclarissimo consanguineo suo *W* Com. *Pembrook* Came-
Stannuar. rario hospitii sui, præclari ordinis Garterii Milit. Cu-
 stodi *Stannuar.* in Com. *Devon.* & *Cornub.* Capitali Sen-
 nescallo totius Ducat. Vic Subsenesc. Deputat sive
 ejus locum-tenenti Cur. *Stannuar.* de *Chayford* in Com.
Devon. salutem.
- Cheltenham.* Capitali Senescallo, Ballivo & Sectatoribus Manerii, Burgi
 sive Villæ de *Cheltenham* necnon custod. Goaræ nostræ
 ibidem.
- Cheney-Court.* Ballivis Reverendi in Christo Patris *T* Episc. *C.* Cur. suæ
 de le *Cheney-court.*
- Cheping-Wy-* Majori Ballivis & Burgenf. de *Cheping-Wycomb.*
comb.
- Chepstow* Senescallo & Ballivis Villæ de *Chepstow* in Com. *Mon-*
Villa. mouth.
- Chepstow Ad-* Senescallo Cur. Admiralitatis in *Chepstow* in Com. *Mon-*
miralitat. mouth.
- Chester-hunt.* Senescallo Cur. L. Militis Manerii sui de *Chester-*
hunt in Coni. *Hartf.*
- Chipping-Ham-* Ballivis & Burgenf. Burgi nostri de *Chipping-Hamden* in
den. Com. *Glouc.*
- Chipping-Nor-* Ballivis, Senescallo sive communi Clerico vel Deputa.
den. ejus Burgi sive Villæ de *Chipping-Norton* in Com.
Exon, salutem.
- Citrographerio.* A. C. Armigero Citrographerio Curie nostræ de Barco
 salutem.
- Christ church.* Majori & Burgenf. Burgi sui de *Christ-church* in Com.
Southampton.
- Cicoster* Majori, Aldermanis ac civibus civitat. *Cicoster* salutem.

- Cinque-Ports.** Dilecto & fideli Consiliar. nostro Ed. Dom. Zouch, Sath^r
Maura & Cantelupæ Constabular. Castri nostri Dover
 Custodi, Cancellario & Admirallo Quinq; Portuum
 nostrorum & membrorum eorundem sive ejus locum
 tenenti, vel Deputat. ibidem salutem.
- Clay juxta mare.** Senescallo C. H. Curia suæ Porris de Clay juxta mare.
- Clifton Dartmouth Hardne. Clitz.** Majori, Ballivo & Burgensibus Burgi sue de Clifton Dartmouth Hardnes in Com. Devon. salutem.
 Senescallo Cur. libertatis Reverendi in Christo Patri
 Dom. Tho. Episc. Winton Manerii sui de *Southwark*.
- Clithero.** Ballivo Burgi sui de Clitheroe in Com. Lancastr. salutem.
- Chinsland Stannar.** Gardiano Stannar. Devon & Cornub & Capitali Senescallo Ducat. sui Cornub aut suo Deputat. ibidem salutem.
 præcipue sibi aut suo Deputat. Senescallo in fra Manerium de Stan. Chinsland parcel. Ducat. Cornub. præ
 infra Com. Cornub. &c.
- Colchester.** Ballivis Villæ de Colchester salutem.
- Coldfield Sutton.** Gardiano & Societati Villæ nostræ de Sutton Coldfield in Com War
- Commissario Cur Archiepif.** A. B. Auditori causarum venerabilis in Christo Patri
 G. Archiepisc. Cantuar totius Angliæ Primat. causarum & negotiorum Cur. & Audientia
 suæ.
- Commissario Cur London.** A. B. Commissario generali R. Episcopi London. Cur. suæ
 Christianitatis apud London. tenend. vel ejus locum
 tenenti
- Coventr Civit.** Majori & Ballivis Civitatis Coventr. in Com. Warr. salutem.
- Corf. Castrum.** Majori & Senescallo de Corf. Castle in Com. Dorset (per an Corf vel Croft)
- Cramborn.** Ad Hundred. Cur. W. Comit. Sarum Manerii sui
 Cramborn in Com.
- Cricklade.** Ballivo & Burgensibus Burgi sui de Cricklade in Com. Wilts. salutem.
- Cullenbeck.** Senescallo Cur. suæ de Cullenbeck in Com.
 Dilecto & fideli nostro J. L. Custod. brevium nostrorum
 de Communi Banco.
- Custod. Brevium in Communi Banco.**

Custod. sigill. Prædilecto & fideli suo J. W. Episcop. Lincoln. & Custodi
magni sigilli sui *Angliæ.*
Custod. privat. E. Comiti Wigorn & Custodi privati sigilli sui.

D.

Daux. Ballivo A. C. M. Manerii sui de Daux in Com.
Ebor.

Dartmouth. Majori Ballivo & Burgensibus de Clifton Dartmouth
Hardnes in Com. Devon.

Daventry. Ballivo Burgensibus & Communitati de Burgo de Daventry
in Com. Northamp. salutem.

Denbigh. Ballivis & Recordatori Burgi five Villæ de Denbigh salutem.

Derby. Ballivis Recordatori & Burgensibus Villæ five Burgi de
Derby in Com. Derby, & eorum cuilibet salutem.

Derby. Ballivis & Burgensibus Burgi nostri Derby.
Devises. Majori Ballivis & Burgensibus Burgi nostri de Devises.

Doncaster. Majori & Recordatori Villæ de Doncaster & eorum cuilibet.

Donwich. Ballivis Villæ sue Burgi de Donwich in Com. Suffolk.

Dorchester. Ballivo & Recordatori Burgi sui de Dorchester in Com. Dorset.

Dover. Conitabular. nostro Castri nostri de Dover in Com. *Canc.*
infra Libertat. Quinque Portuum sive Deputat. ejus
ibidem seu eorum alteri.

Downton. Constabulario & Burgensibus Burgi sui de Downton in
Com.

Downhewit. Majori Aldermanis & Recordatori Burgi sui de Downhewit
alias Launceston in Com. Cornub.

Downwick. Ballivis Burgi five Villæ de Downwick in Com. *Suff.* salutem.

Droitwich. Ballivis & Burgensibus Burgi sui de Droitwich in
Com.

E 4

Dunelm.

Dunelm. vel *Reverendo in Christo Patri W. D. providentia divina Dunelm. Episcopo aut ejus locum-tenenti ibidem salutem.*

Sede vacante. T. C. Armigero Cancellario com. Palatini *Dunelm.* Sede Episcopali ibidem jam vacante.

Aliter in alio libro. Custodi Spiritualitatis Episcopatus *Dunelm.* sede Episcopali vacante.

E.

East Greensted **B**allivo & Burgenfibus Burgi sui de *East-Greensted* in com. *Suffex* salutem.

East-Low Majori & Burgenfibus Burgi sui de *East-Low* in com. *Cornub.*

East-tretford Ballivis Villæ suæ de *East-Stretford* in com. *Nottin.* (quæ si *North.* vel *Nor.*)

Ebor. Civitas. Majori, Aldermanis & Vic. civitatis *Ebor.*

Sancti Petri Senescallo Cur. libertatis Decani & Capituli Ecclesiæ *Ebor.* Cathedr. Sancti Petri *Ebor.*

Eborum beati Senescallo Cur. libertatis Decani & Capituli Ecclesiæ *Petri.* Metropolit. beati Petri *Ebor.* in com. *Ebor.*

Edlogom. Ad Cur. E. M. Armig. Manerii sui de *Edlogom* in com. *Ely.* Justic. Episcop. *Elien.* ad placita infra Insulam *Elien.* tenend. Ac Senescallo ejusdem Episcopi infra libertatem Insulæ prædict. & eorum cuilibet salutem.

Episcopatus Ca- Ballivo & Burgenfibus Villæ Castri Episcopensis, in com. *Salop.*

strum. in com. *Salop.*

Escae; ori. A. B. Armigero Escaetori nostro com. nostri *Salop.*

Vic. ejusdem com. necnon omnibus Ballivis & fidei-
gulis ministris nostris com. præd. tam infra libertatem
quam extra : salutem.

Evermouth. Majori & Burgenfibus Villæ suæ de *Evermouth* in com. *Southampton.*

Evesham, com Majori & Burgenfibus Burgi sui de *Evesham* in com. *Warwick.*

monly Esam gorn. &c. in the *Vale.*

Civit. Exon. Majori & Ballivis civitatis suæ *Exon.* in com. *Devon.*

Ballivis Cur. Provost. ejusdem civitatis & eorum cuilibet.

Eye. Ballivis nostris Villæ & Burgi de *Eye* salutem.

Faral

F.

BAllivis Burgi & Villæ de *Farnham* in com. *Surry*.
 Senescallo Cur. castri reverendi in Christo Patri Dom.
L. Winton Episcopi Manerii sui de *Farnham* in com.
Surry.
 Gardiano prisonæ nostræ de *le Fleet* sive ejus locum-tenenti
 ibidem salutem.
 Ad curiam *Caroli* Principis Walliæ Ducis Cornubiæ
 Comitum Castr. & Flint Manerii sui de *Fordington* in
 com. *Dorset*.
 Senescallo & Ballivo libertatis *Foriet*. oriental. juxta Vill.
Salop.
 Præpositis & Burgenfibus Burgi sui de *Foway* in com. Cor-
 nub. salutem.

G.

Custodi nostro de *le Gatehouse* infra *Westmonasterium*.
 Burgenfibus Burgi sui de *Gatton* in Com. *Surry*.
 Senescallo Cur. suæ de *Gillingham* in Com. *Dorset*. hac
 vice sede Archiepisc. Cantuar. jam vacante, seu ejus De-
 putat. ibidem.
Qu. Whether it belongeth to the Crown, or to the Bi-
 shop here.
 Ballivis Villæ suæ *Gipwici* vel de *Ipswich* in Com. *Suff.* sa-
 lutem.
 Cur. libertatis Dom. Regis de *Glasstonbury* in Com. *So-*
merfet.
 Cur. Dom. Regis. 12. *Hidari* de *Glasston*. libertatis in Com.
Somerfet.
 Majori, Aldermanis & Vic. Civitatis nostræ *Gloxc.*
 Ballivis *W. M.* Armig. & *B. H.* Gen. Manerii sive Dom.
 sui de *Goodrich* in Com.
 Majori & Burgenfibus Burgi sui de *Grampound* in Com.
 Cornub.
 Aldermano & Burgenfibus Villæ de *Grantbam* in Com.
Lincoln. salutem.

Gravelend, & Præposit. Juror. & Capital. Inhabitant. Villarum & P
Milton. roch. de Gravelend & Milton in Com. Canc.
East-Green- Ballivo & Burgensibus Burgi sui de East-Greensted
sted. Com. Suffex salutem.
Grimsbey. Majori & Burgensibus Villæ suæ magni Grimbs by in Co
 Lincoln.
Guilford. Majori & probis hominibus Villæ nostræ de Guilford.

H.

Harbil. **A**D Wapentagium nostrum de Harbil in Com.
Hartpool. Majori & Burgensibus Burgi sui de Hartpool infra
 piscopatam Dunelm.
Hafelmere. Burgensibus Burgi sui de *Hafelmere* in Com. Surry.
Hatfield. Ad Curiam Manerii nostri de *Hatfield* in Com.
Havering at Senescallo & Sectatoribus Cur. Manerii nostri de *Hav*
Bower in quo at *Bower*.
Ramsford.
Helfton. Majori & Burgensibus Burgi nostri de *Helfton* in Co
 Cornub.
Henley super Ballivis Gardian. Pontinariorum Burgensium & Civ
Thames. tis Villæ de Henley super Thames.
Henley super Ballivis Gardian. Burgensibus & Communitat. Vill
Thamesin. de Henley super Thamesin. in Com. Berk. sal
 tem.
Heref. Pal. Ad Curiam Sanct. Episc. Hereford Palatii Heref.
Episc.
Heref. Civit. Majori Aldermanis & Civibus Civitatis nostræ Here.
Herewich. S. Majori & Senescallo Burgi sui Herewici.
Hertf. Burgus. Majori & Capital. Burgensibus Burgi nostri de Hertf. No
 non Senescallo Cur. nostræ de Record. ibidem.
Helfton. Majori & Ballivis Burgi nostri de Helfton in Com. Co
 nub.
Hexam. Senescallo Cur. suæ de Hexham in Com. Westmerl.
Aliter. Senescallo Manerii nostri de Hexham in Com. Westm
 land.
Heydon in Majori & Ballivis Villæ suæ de Heydon in Holdernes
Holdernes. Com Ebor.
Heytesburg. Ballivo & Burgensibus Burgi sui de *Heytesburg* in Co
 salutem.

High

Higham Fer- Majori & Aldermanis Villæ nostræ de *Higham Fivers*, &
vers, or *Fer-* eorum cuilibet.

Horsham. Majori & Burgesibus Burgi sui de *Horsham* in Com. *Sus-*
sex salutem.

Huntington
burguin Com.
Southamp.

Qu. *Hunt.* Ballivis Villæ nostræ *Hunt.*

I.

Jernemouth. **B** Allivis Villæ five Burgi & Libertat. Villæ five Burgi
magnæ *Jernemouth.*

Aliter. Ballivis Villæ nostræ magnæ *Jernem.* salutem.

St. Jerminis. Præposit. & Senescallo Burgi de *St. Jerminis* in Com. *Cor-*
nub.

Insul. Elien. Justic. nostris ad placita infra *Insul. Elien.* in Com. *Can-*
tabr. tenend. Assign.

St. Johannis Senescallo Cur. Libertat. Ante placitorum Sancti *Johan-*
Beverlacy. nis *Beverlacy* in Com. *Ebor.* salutem.

St. Ives. Præposit. & Burgesibus Burgi sui de *St. Ives* in Com.
Cornub.

Ipswich. Ballivo Villæ suæ de *Ipswich* in Com. *Suff.* salutem.

Justiciariis Jacobi Leg Militi Capital. Justic. nostro ad placita coram
ad placita. nobis tenend. assignat.

Aliter. T. H. Uni Justic. nostrorum ad placita coram nobis te-
nend. &c.

Justic. de H. H. Mil. & Bar. Capitali Justic. nostro de Banco.

Banca.

Aliter. R. H. Mil. uni Justic. nostrorum de Banco.

K.

St. Katherin, **S** Senescallo, Magistro five Custod. Hospital. five liberæ
prope Turrim Capellæ S. Katherinæ prope *Turrim London.* seu ejus
London. locum-tenenti ibidem

Aliter. Senescallo Libertat. Magistr. Fratrum & sororum & Ca-
pel. in Ecclesia hospitali S. Katherinæ virginis & mar-
tyris prope *Turrim London.* Cur. nostr. ibidem. Necnon
Ballivo ejusdem.

Kendal.

- Kendal.** Ballivis Manerii nostri de *Kendal* in Com. *Westmerland*.
Kirby-Kendal Aldermano, Recordatori & Burgens Burgi de *Kirby-Kendal* in Com *Westmer*.
Kings-Norton Senescallo, Ballivo & Sectatoribus Cur. Manerii de *Kings-Norton* in Com. *Wigorn*. & eorum cuilibet.
De quo. Qu. This being the late *Queens*, and before her death was stiled accordingly.
Kingston super Hull. Majori & Vic. Villæ nostræ de *Kingston* super *Hull*.
Kingston super Thamas. Ballivis & Senescal. Cur. Villæ nostræ de *Kingston* super *Thamesin* & in absentia dicti Senescal : Ballivis & Recordatori ejusdem villæ sive duobus eorum salutem.
Knayesborough. Senescallo Cur. Honoris de *Knayesborough* in Com. *Ebor*. parcel : Ducat. nostri *Lancastr*.
 L.
Lancastr. Cancellario nostro Com. Palatini nostri *Lancastr*. vel ejus locum-tenent. ibidem salutem. vobis mandamus quod per breve nostrum, sub sigillo Com. Palatini nostri præd. debet. conficiend. mand. fac. Vic. Com. præd. quod &c
Lancastr. Bur- Majori & Ballivo Burgi sui *Lancastr*. in Com. *Lancastr*.
gus.
Lanceston alias Downhevet Majori & Communitat. Burgi de *Lanceston* alias *Downhevet*.
Lanceston alias Newport. Senescallo & Ballivo Cur. feod. Castri nostri de *Lanceston* parcel. Ducat. nostri *Cornub*.
Ledbury. Ballivo suo burgi sui, de *Ledbury* in Com. Nec.
 non judicibus Cur. ejusdem Burgi salutem.
Leicester. Majori Ballivis & Burgensibus Burgi sui *Leic*.
Leicestr. Majori & Burgensibus Villæ *Leicestr*.
Lempster, Ballivis & Burgensibus Burgi sui de *Lempster*. in Com.
 which I take *Heref*. salutem.
 for *Lemster*.
Leoni. Ballivo & Burgensibus de *Leoni* in Com. salu-
 tem.
Leverpool. Majori & Aldermano Villæ suæ de *Leverpool*. in Com. *Lancastr*. salutem.
Lewes. Conitabulario & Burgensibus Burgi sui de *Lewes* in Com. *Sussex* salutem.
Lidford. Majori & Burgens. Burgi de *Lidford*.
 Linc.

Lincoln civit.	Majori Vic. & Civibus Civitat. suæ <i>Lincoln</i> .
Lincoln.	Ballivo Decani & Capitul. Ecclesiæ Catholic. beatæ <i>Mariae Lincoln</i> , Cur. suæ Boale infra Clausum ibidem.
Liskaret, alias Liskerd.	Majori & Burgenfibus Burgi de <i>Liskaret</i> , alias <i>Liskerd</i> .
Litchfield.	Ballivis Burgenfibus & Civibus Civitat. <i>Litchfield</i> .
London.	Majori, Aldermano ac Vic. <i>London</i> , & eorum cuilibet salutem.
London Counters.	Consimilis.
Lostwich.	Majori & Burgenfibus Burgi sui de <i>Lostwich</i> in Com. Cornub. salutem.
Ludgershal.	Burgenfibus Burgi sui de <i>Ludgershal</i> in Com. <i>Wilts</i> salutem.
Ludlow.	Ballivis Villæ de <i>Ludlow</i> in Com. <i>Salop</i> .
Lugbargh.	Ad Hundred de <i>H. B. Milit. & Baronett. de Lugbargh</i> in Com.
Lugharnes.	Ad Cur. <i>R. H. Armig. de Lugharnes</i> in Com.
Lugwarden.	Ballivis <i>T. B. Armig. Manerii sui de Lugwarden</i> in Com.
Lymington.	Majori & Burgenfibus Burgi sui de <i>Lymington</i> in Com. <i>Southampt.</i> salutem.
Lyn Episc.	Majori Villæ de <i>Lyn Episc.</i> in Com.
Lyn Regis in Dorset.	Majori Villæ nostræ de <i>Lyn Regis</i> in Com. <i>Dorset</i> .
Lyn Regis in Norf.	Majori & Recordatori Villæ five Burgi de <i>Lyn Regis</i> in Com. <i>Norf.</i> & eorum utrique.

M.

Magor & Redwick.	AD Cur. E. Comitum <i>Wigorn.</i> de <i>Magor. & Redwick</i> in Com.
Maidenhead.	Gardinario, Pontinariis, Burgenfibus & Communitat. Villæ de <i>Maidenhead</i> in Com. <i>Berks.</i> salutem.
Maidston.	Majori Villæ & Parochiæ de <i>Maidston</i>
Malden.	Ballivis Villæ suæ de <i>Malden</i> in Com. <i>Essex</i> salutem.
Malmsbury.	Alderimanis & Burgenfibus Burgi sui de <i>Malmsbury</i> in Com. <i>Wilts.</i> salutem.
Malton, quere Lan.	in Com. <i>Ebor.</i>
Mandevile.	Senescallo & Ballivo honoris de <i>Mandevile</i> parcel : Ducat. <i>Lancastr.</i> salutem.
Marden.	Ballivis suis Manerii de <i>Marden</i> , alias <i>Mawrden</i> , alias <i>Mawrthyn</i> in Com.
Marleberge.	Quæ, If not <i>Marlborough</i> .

Marle-

Marleborough Majori & Burgensibus Burgi five Villæ de *Marleborough* in Com. *Wils.*

Marr. Marref Marr. Marescal. Cur. nostræ coram nobis five ejus Deputat. coram nobis

Marr. hospic. Judicibus Cur. Virgæ hospitii nostri velejus Deputat ibidem salutem.

Marshals Court, or Verge-Court. Senescallo Cur. Marescal. hospitii nostri. Ac marr. nostræ ejusdem hospitii. Necnon Judicibus Cur. nostræ Virgæ hospitii præd. & eorum Deputat. ibidem.

St. Martins le Grand London Senescallo Decani & Capituli Ecclesiæ Collegiat. beati Petri Westm. Cur. libertatis suæ five præcinct. Sancti Martini le Grand London, & Contabular. ibidem salutem.

St. Mawes. Majori Villæ suæ St. *Mawes* alias St. *Maries* in Com. Cornub. salutem.

alias St. Maries. Majori Villæ suæ de *Melcomb Rigis.*

Melcomb regis Weymouth, & Melcomb regis Majori Aldermanis Ballivis Burgensibus & Communitat. Villæ de *Weymouth*, & *Melcomb Regis*, in Com. Dorset.

Michael. Præposit. & Communitat. Burgi sui *Michaelis* in Com. Cornub. salutem.

Middleton. Senescallo Cur. *Middleton* prope *Sittingborn.*

Midhurst. Ballivo & Burgensibus Burgi sui de *Midhurst* in Com. Sussex.

Mincholis. Burgensibus Burgi de *Mincholis* in Com. Somerset. salutem

Monmouth. Majori & Ballivis Villæ suæ de *Monmouth.*

Morpeth Ballivis & Burgensibus Burgi sui de *Morpeth* in Com. Northumb.

Mynhead. Præposit. & Burgensibus Burgi de *Mynhead* in Com. Somerset. salutem.

N.

Newark super Trent. Majori & Aldermanis Villæ de *Newark* super *Trent* in Com. *Notting.*

Newberry. Majori Aldermanis & Burgensibus Burgi de *Newberry* in Com. Berks

Newport. Majori & Ballivis Villæ five Burgi de *Newport* in Com. Southamp.

Newton.

- Newton.* Ballivo & Burgenſibus Burgi ſui de *Newton* in Com. *Lancſtr.*
- Northampton.* Majori & Ballivis Villæ *Northampton.* in Com. *Northamp-*
ton.
- Norwicus Ci-* Majori Aldermanis & Vice-Com. Civitatis *Norwici* & eo-
vit. rum cuilibet.
- Norwici.* Majori & Vice-Comitibus Civitat. *Norwici* in Com. *Nor-*
folk.
- Nottingham.* Majori Aldermanis & Vice-Comitibus Villæ *Nottingham*
in Com. *Not.*
- Novum* Majori Aldermanis & Vic. Villæ novi Caſtri ſuper Ti-
Caſtrum nam in Com. *Northumb.*
- Super Tinam.* Majori & Burgenſibus Burgi ſui Novi Caſtri ſubter *Linam*
Novum in Com. *Staff.*
- Paſtrum*
- Subter Lin.*

O.

- Ofweſtry. Villa* **B** Allivis & Senefcallo Villæ de *Ofweſtry* in Com. *Salop.*
(ſed qu.)
- Oxford.* Majori & Portmanis Villæ de *Oxford* in Com. *Suff.*
- Ofweſter* Ballivis & Burgenſibus Villæ de *Ofweſter.*
- Oxon Civit.* Majori & Ballivis Civitatis *Oxon* in Com. *Oxon* ſalu-
tem.
- Oxon Univerſ* Vice-Cancellario Academiæ *Oxon.*

P.

- Padſtow alias* **M** Majori & Burgenſibus Burgi noſtri de *Padſtow* in Com
Wrockſtow. Cornub.
- Park* Senefcallo R. W. Ar. Manerii ſui de *Park* Lettys alias
Parte Lettys in Com.
- Pawton.* Senefcallo & Ballivo Manerii ſive Villæ de *Pawton*, (qu.
ſi non *Pawnton.*)
- Pembrig.* Ballivo & Senefcallo Villæ ſui Burgi de *Pembrigg* in
Com.
- Penwith.* Senefcallo & Ballivo hundred. & libertatis ſux de *Penwith*
in Com. Cornub.
- Peterborough.* Senefcallo Cur. Decani & Capitul. Eccleſiæ Cathedral.
Civitatis de Burgo Sancti Petri in Com. *Northampt* &
Burgenſibus ejuſdem Civitat. & eorum cuilibet.

Petersfeld.

- Petersfield.* Majori & Communitatibus Burgi sui de *Petersfield* Com. *Southamp* salutem.
- Pevensey.* Ballivo Libertatis Dom. Regis Ducat. sui *Lancast.* in *ripam* suam de *Pevensey* in Com.
- Pickering.* Ballivis & Sectatoribus Cur. nostræ de *Pickering* in Com. *Ebor.*
- Plymton.* Majori, Ballivis & Burgenfibus Burgi sui de *Plymton* in Com. *Devon* salutem.
- Plymouth.* Majori & Communitati Burgi sui de *Plymouth* in Com. *Devon* salutem.
- Pontfract.* Majori Villæ suæ *Pontfract.* in Com. *Ebor.* parcel : Ducat. sui *Lancast.*
- Alister.* Ad Cur. honoris nostri de *Pontfract.* in Com. *Ebor.* parcel : Ducat. *Lancast.*
- Pool.* Majori Villæ de *Pool* & Seniori Ballivorum ejusdem Villæ.
- Portland.* Ad Cur. Manerii sui de *Portland* in Com. *Dorset.*
- Portpigham,* Majori & Burgenfibus Burgi sui de *Portpigham*, alias *Westlowe* in Com. *Cornub.* salutem.
- or *Porthigham*
alias *Westlow.*
- Portsmouth.* Majori, Aldermanis & Burgenfibus Villæ de *Portsmouth.*
- Preston And-* Majori & Ballivis Villæ five Burgi sui de *Preston* in Com. *Lancast.*
- dernefs.*
- Pymbern.* Ad Hundred *Willielm.* Comitibus *Sarum* de *Pymbern.* in Com.
- Cur. Palatii.* Judicibus Cur. Palatii nostri *Westminst.* & eorum cunctis

Q.

Quinborough. **M**ajori & Burgenfibus Burgi sui de *Quinborough* in Com. *Canc.* salutem.

R.

- Reading.* **M**ajori, Aldermanis & Burgenfibus Burgi de *Reading* in Com. *Berks* salutem.
- Richmond.* Aldermanis, Recordatori & Burgenfibus Burgi nostri *Richmond* in Com. *Ebor.*
- Rillaton.* Senescallo, Decemar. & Præposit. ac liberis tenentibus Manerii sui de *Rillaton* parcel Ducat. sui *Cornub.*
- Rippon.* Senescallo & Ballivis Libertat. Cur. Canon. nuper Canonorum & Capitalis Ecclesiæ Collegiat. de *Rippon* in Com. *Ebor.* parcel Ducat. nostri *Lanc.*

Qu. If more Rippons.

- Roffen C.** Majori, Aldermanis & Civibus Civitatis nostræ *Roffen* in Com. *Canc.* salutem.
- Roffen Palla-** Senescello Reverendi in Christo Patris J. Episc. *Roffen.*
tium Cur. Paatii sui *Roffen.* salutem.
- Rumney.** Ballivis & Jurat. de *Rumney Marsh* in Com. *Canc.*
- Ryaltou.** Senescallo & Ballivo Manerii nostri de *Ryaltou* in Com. *Cornub.* salutem.
- Rygate.** Ballivo & Burgenfibus Burgi sui de *Rygate* in Com. *Surrey.*

S.

- Salop, or** **B** Allivis Villæ nostræ *Salop* in Com. *Salop.* salutem.
Shrewsbury.
- Saltash.** Majori & liberis Burgenfibus Burgi sui de *Saltash* in Com. *Cornub.*
- Civit. Nova** Ballivis libertatis Episc. *Sarum* Civitatis novæ *Sarum.*
Sarum.
- Sarum vetus** Burgenfibus Burgi sui veteris *Sarum* in Com. *Wilts.*
- Sarum nova** Ballivis libertatis Decani & Capituli Ecclesiæ Cathedralis
sede Episcopali *Sarum* Civitatis suæ novæ *Sarum*, sede Episcopali jam
vacante. vacante.
- LeSavoyextra** Ballivo libertatis Dom. Regis Ducat. sui Lanc. apud le
Temple-Bar. Strond in Com. *Mid.* salutem.
- Scarborough.** Ballivis Villæ nostræ de *Scarborough*, five *Scarburg*, in Com. *Ebor.*
- Shaftsbury.** Majori & Burgenfibus Burgi sui de *Shaftsbury*, in Com. *Dorset.*
- Shafton.** Majori Recordatori & Burgenfibus Burgi de *Shafton* in Com. *Dorset.*
- Sheffield.** Ad Cur. C. Comitum *Salop* de *Sheffield* in Com. ()
- Sherborn.** Ad Cur. Hundred. de *Sherborn* in Com. (*Dorset.*)
- Shoreham.** Constabulario & Burgenfibus Burgi sui de *Shoreham* in Com. (*Lanc.*)
- Slaughter.** Senescallo, Ballivo & liberis Sectatoribus libertatis Hundredi nostri de *Slaughter* in Com. *Glouc.* salutem
- St. Jermins** Præposit. & Senescallo Burgi de *St. Jermins* in Com. (*Cornub.*)
- Snaith.** Ad Cur. nostram de *Snaith* in Com. ()

Aliter.

- Aliter.* Ballivis & Sectatoribus Cur. Manerii nostri de Snail
parcel Ducat. *Lanc.*
- Southmoulton* Majori & Capital. Burgensibus Villæ suæ *Southmoulton.*
- Southold.* Ballivis Villæ nostræ de *Southold*
- Aliter.* Ballivis & Burgensibus Libertat. Villæ de *Southold.*
- Southampt.* Majori & Ballivis Villæ *Southham.*
- Vill. Aliter.* Majori & Ballivis Villæ nostræ *Southampt.* Cur. suæ post
pulverizat. ibidem. Necnon Custod. Goal. nostræ in
tra eandem Villam ejusdem Deputat. ibidem & eorum
cū libet
- Aliter.* Vic. *Southampt* Necnon Custod. Goal. nostri Castri *Winton*
ac Civit. nostræ *Winton*
- Southwark* Senescallo Cur. Libertat. Reverendi in Christo Patris
Maner. *Winton.* Episc. Manerii sui de *Southwark* in Com.
Southwark *Surry.*
- Burgum.* Senescallo Cur. Libertat. Majoris Communitat. ac Civit.
um Civitatis *London* Burgi sui de *Southwark.*
- Spiritualis* J. S. Legum Doctori ac Audientiæ Reverendissimi in
Cur. Christo Patris G. Arch. episcopi *Cantuar.* totius *Angliæ*
Primat. & Apostolicæ sedis legali Gausarum, & negotiorum
auditori.
- Stafford.* Ballivis & Burgensibus Burgi de *Staff.*
- Stamford.* Aldermanis & burgensibus Villæ suæ de *Stamford* in Com.
Lincoln.
- Stepleton.* Senescallo Cur. T. G. Militis Manerii sui de *Stepleton*
Com. ()
- Stebunheath.* Senescallo prænobilis T. W. Manerii sui de *Stebun*
heath.
- Steyning.* Constabulario & Burgensibus Burgi sui de *Steyning*
Com. ()
- Stockbridge.* Ballivo & Burgensibus Burgi sui de *Stockbridge* in Com.
Southampt.
- Stonelunslan* (Tali Dom.) Gardiano Stanmar. Devon & Cornub. Capitali
Stannar. Senescallo Ducat. in Cornub. aut suo Deputat.
ibidem & præcipue sibi aut sub Deputat. Senescallo in
fra manerium de *Ston-Ciunslan* parcel. Ducat. *Cornub.*
præd. infra Com. *Cornub.* salutem.
- Le Strand.* Ballivo Libertat. Ducat. *Lancaster.* in *le Strand* in Com. no
stro *Midd.*

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Stretford, East Ballivis Villæ suæ de East-Stretford in Com. Not.

East Stret-

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Sudbury.

Majori, Aldermanis, Burgensibus ac Senescallo Burgi five Villæ de *Sudbury* in Com. *Suff.* & eorum cuilibet salutem.

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Reverendissimo in Christo Patri G. Providentia Divina Cantuar. Archiepsc. Primat. & Metropolitano ac alius supremis Commissionar. Regis ad Causas Ecclesiasticas inter alia sub magno sigillo *Angliæ* legitime & sufficienter autoritat.

T.

both.

Ballivo Cur. de Talboth Villæ de Lenn Episcop. in Com. ()

nmworth.

Ballivis Villæ nostræ de Tamworth in Com. *Stafford.*

estock.

Senescallo five Ballivo F. Comit. *Bedf.* libertat. suæ de Tavestock.

nton.

Ballivo Reverend. in Christo Patr. T. Episcopi Winton Libertat. suæ de *Taunton* & *Taunton-Dean.*

thburgh.

Ballivo, Burgensibus & Communitat. Burgi sui de *Tewksburgh.*

thsted.

Majori, Ballivis & Communitat. Burgi de *Thacksted* in Com. *Essex*, & eorum cuilibet salutem.

ford.

T. C. Comit. S. Capitali Senescallo Villæ nostræ de Thetford parcel. Ducat. nostri *Lancastr.* vel ejus Deputat. ibidem.

er.

Majori & Recordatori Burgi nostri de Thetford in Com. *Norf.*

malton.

E. H. Præclari ordinis Garterii Milit. Dom. Hasting de Loughborough Capital. Senescallo nostro Ducat. nostri Cornub. necnon feod. & Manerii de Thremalton five ejus Deputat. ibidem salutem.

th.

Burgensibus Burgi sui de Thusk in Com. *Ebor.*

hill.

Ad Cur. nostram honoris nostri de *Tickhil* in Com. *Ebor.* parcel. Ducat. sui *Lancastr.*

- Torrington magna.* Majori, Aldermanis & Burgensibus Burgi sive Villæ *Torrington magna*.
Majori, Aldermanis Capital. Burgens. & Senescallo Burgi sive Villæ de *Torrington magna* in Com. *Devon*.
- Aliter.*
Totnes. Majori & Burgensibus Burgi de *Totnes* & eorum cuilibet.
- Trebenin, alias Boffiny.* Majori & Burgensibus Burgi sui de *Trebenin, alias Boffiny* in Com. *Cornub.*
Trigoni. Senescallo & Ballivo H. P. Manerii sui de *Trigoni P.* in Com. *Cornub.*
- Tregony.* Ad Cur. A. W. Ar. de *Tregony* in Com. *Cornub.*
Trellock. Majori & Ballivis W. Comitis *Pembrook Villæ* sue *Trellock* in Com. (*Cornub.*)
- Trennaton.* Charissimo Consanguineo ac prædilecto & fideli Confarario nostro Willielmo Comiti *Pembrook Domino* merario hospitii nostri, prænobilis ordinis *Garterarii* lit. Capital. Senescallo Ducat. nostri *Cornub.* Necnon teod. & Manerii de *Trennaton* in Com. *Cornub.* suis Deputat. salutem
- Truyo.* Majori & Burgensibus Burgi sui de *Truyo* in Com. *Cornub.*
- Turman-Hall.* Ad Cur. W. B. Manerii sui de *Turman-Hall* in Com. *Cornub.*
- Turris London.* Willielmo Ward Militi Constabular. locum-Tenent. *Turris London.* Necnon Senescallo Cur. ejusdem & eorum cuilibet.

V.

- Vierge, or Mar-shal sey-Courts.* Senescallo Cur. Maresci hospitii nostri : Ac Maresci hospitii nostri : Necnon Judicis Cur. nostræ *Vierge* & eorum cuilibet.
- Uske.* Præpositis & Ballivis Villæ sive Burgi de *Uske*.

W.

- Waittel. Cur.* Ballivis & Sectatoribus Cur. sue de *Waittel*
Wakefield. Ad Cur. Manerii nostri de *Wakefield* in Com. *West-Regni*
- Walden.* Thesaurario & Camerariis Villæ postæ de *Walden* in Com. *West-Regni*

Walling

- Wallingford.* Majori, Aldermanis & Recordatori Burgi five Villæ de Wallingford in Com. Berks. & eorum cuilibet salutem.
- Walsal.* Ballivis Manerii sui de Walsal in Com. () salutem.
- Warwick.* Ballivis & Recordatori Burgi nostri Warwici in Com. Warwick.
- Weymouth, & Melcomb Regis* Majori, Aldermanis, Ballivis, Burgensibus & Communitatibus Villæ de Weymouth & Melcomb Regis in Com. Dorset.
- Wellen. Cur.* Senescallo five Ballivo Cur. Reverendi in Christo Patris J. Bathon. & Wellen. Episcopi.
- Wellen. Burgis* Senescallo five Ballivo Cur. nostræ de placit. ad reverend. in Christo patrem Dom. J. permissione divina Bathon. & Wellen. Episcop. pertin. five concess. tent. apud Guild-Hall in ra Bugum & Villam nostram de Welles in Com. nostro *Somer. set.*
- Wenlock.* Ballivo & Senescallo Villæ Libertat. de Wenlock magna in Com. *Salop.*
- Wentworth* Ballivo Libertatis Thomæ Dom. Wentworth in Com. *Midd.* Inquire if they be distinct under the same stile, lying in eodem Com.
- Westburg.* Custod.
- Westburg.* Majori & Burgensibus Burgi suæ de Westburg. in Com. salutem.
- Westm.* Ballivo Libertat. Decani & Capituli Ecclesiæ Collegiat. beati Petri Westm.
- Westm. Dean* Ballivo Libertat. Decani & Capituli Ecclesiæ Collegiat. beati Petri Westm.
- Whitchurch.* Majori & Communitatibus Burgi sui de Whitchurch in Com. *Som. shamp.*
- Wickcome.* Ball. Wickcome in Com. Buckingham. *Inquire* Chipping-Wickcome before.
- Wigmore.* Senescallo & Ballivo Villæ five Burgi de Wigmore in Com. *Heref.* salutem.
- Wigorn.* Majori & Aldermanis Burgi sui de Wigorn. in Com. Wigorn.
- Wike Regis.* Ad Cur. Dom. Regis Manerii sui de Wike Regis in Com. ()
- Wilton super Wian.* Ballivis A. B. Armig. Manerii five Dom. de Wilton super Wian in Com. ()

Nova Windsor Majori, Ball. ac Burgenf. Villæ five Burgi nostri de nova Windsor in Com. Berks.

Aliter. Majori, Aldermanis, Ballivis ac subfenescallo Burgi de Nova Windsor & eorum cuilibet.

Castrum Windsor. T. C. Constabular. Honoris & Castri sui de Windsor Custod. Forestæ ejusdem, aut ejus locum-tenen. seu ejus Deputat. ibidem.

Aliter. Carolo Comiti Nottingham. Baron. Howard de Effingham præclari ordinis Garterii Milit. Magno Admirallo Angliæ Constabular. honoris castri nostri de Windsor Custod. totius Forestæ ibidem, Janitori extra portam dicti Castri salutem.

Winton Civit. Majori Recordatori vel ejus Deputat. & Ball. Civitat. nostræ Winton & eorum cuilibet.

Witterol. Ballivo Cur. nostræ Witterol salutem.

Woodstock. Majori, Villæ suæ de Nova Woodstock.

Aliter. Majori & Communitat. Burgi de Nova Woodstock.

Worcester. Majori Recordatori & Aldermanis Civitat. nostræ Worcester salutem.

Worham. Majori & Burgenfibus Burgi sui de Worham in Com. Dorset.

Wormlow. Ballivis A. Dom. Chandos & E. B. Ar. Manerii five hundred de Wormlow in Com. ()

Wotlow. Ballivis Villæ de Wotlow.

Wotton-Basset. Majori & Burgenfibus Burgi de Wotton-Basset in Com. Wilts. & eorum cuilibet.

Writtel. Ballivis & Sectatoribus Cur. suæ de Writtel in Com. ()

Wye. Senescallo & Ballivo H. C. Nobil. ordinis Garterii Militis Dom. Hunsdon Regalis Manerii sui de Wye in Com. Kanc. & eorum cuilibet salutem.

Wigorn Civitas. Ballivis, Aldermanis & Camerar. Civitat. nostræ Wigorn.

These are the several Titles of several Corporations, which happily may some of them alter in some particular, by reason of renewing their Charters, and having larger Grants, by which they are incorporated anew, and which may alter the Title, of which the Attorney must (the best he may) inform himself.

Some few Rules have been omitted, which concern what hath been premised concerning Actions of Debt, and may be of much use in other Actions; which take as follows: And first of Amerciaments, and of the Estreating of them.

Note, That if the Party be arretted, and at the return of the Writ the Sheriff return (that he hath taken the body of the Defendant, which he hath ready, &c.) and yet the Defendant appears * not, you may if the Sheriff

will be so content, take the Bond of appearance given to the High-Sheriff, and have it assigned to you, and so you shall be inabled to sue the Defendant and his Sureties in the High-Sheriffs Name; or if you will not so do, or the Sheriff will not let you have the bond, then you must give the Sheriff a day by Rule to bring in the body, &c. in the Prothonotaries Remembrance; which if he do not, he shall be amerced, and then you may sue out an *Habeas Corpus* with the Prothonotaries Clark; and

if he bring him not in upon that, you shall continue amercing of him; and in case the Sheriff return that he is (*Lan-uidus in prisona*) that is to say, that he is so sick he cannot bring him; then if it be found a Delay, issues forth the *Du-tecum*, &c. and still upon the Amerciament you shall increase Issues, untill you force an appearance; but you may give your *Habeas Corpus*, and also give your Rules for amercing the Defendant as well in the Philizers, as in the Prothonotaries Office.

When you come to the estreating of your Amerciaments, you must see them entred with the Philizer or * Prothonotary * If in the Prothonotaries Remembrance, you must carry it to the Clark of the Warrants, and bid him to certifie it into the Exchequer.

where the Rule was given; and then the Clark of the Warrants, through whose Office his Prothonotaries Rolls whereby he may take notice of the Defendant his (*Miseria* *dia*) or being in mercy upon Judgments, will certify Amerciaments, as he doth all other of that nature of course to the *Exchequer*: But if it be in the Philizers Office, must get a Certificate from the Philizer to the Clark of Warrants, who will return it into the *Exchequer*, where the Sheriff, when he passeth his account, will be inforced to pay.

Now if the Sheriff who made the Arrest be out of his Office, before you make your proceed or have appearance, shall have a Writ called a *Distringas nuper vicecomitem*, that is to say, a distraining of the late Sheriff, which Writ must be made out of that Office whence the last proceedings were had.

Note, that every Attorney, Clark, or Officer of the Court may have an attachment of privilege, which is to be made in one of the Prothonotaries Offices, and must be made returnable at a day certain, and is as effectual on their behalf as original; for if the Debt be fineable, you save the Fine; although the Debt be small, or that it be any other Action yet shall you hold him to special Bail, and upon a *Cepi* returned, you may proceed to amerce the Sheriff, as is in other Cases.

Note, that if you cannot arrest the party upon your process taken from the Philizer, you must be sure to see the process carefully continued, which costs you four pence for each Term, from the time of taking them forth; for if upon a second Writ the Defendant find your Writ discontinued, he may enter a discontinuance, and the want of any one continuance is Errour at the time of the Judgment.

I think a *non-continuance* is not help'd by any Statute before the 21 Jac. but if Judgment be given upon default, and Count be wanting, and Errour brought, it shall not be amended upon motion, as it was adjudged in *Tr. 1651. Case in Breck's Case*.

Note, that when you deliver unto the Defendant his Attorney the Copy of your Declaration, you are to shew your Bond, Bill, Will, Letters of Administration, Indenture, or other Writings under Seal, whereby you intitle your self, and this, for that you have (*a proferat hic in curia*) of these

things in your Declaration, which is in substance an acknowledgment of them to be brought into Court; but if the Defendants Attorney receive the Declaration, and then call not for sight or hearing of the Bond, &c. and after pleads or takes an Imparance, you are not bound afterwards to shew it him.

Observe further, that if you bring your Action against two or more, for one Debt due upon one Specialty, when you draw your (*Præcipe*) for * the Cursitor, take heed whether your Specialty be jointly or severally; Jointly thus, We bind us, our Heirs, Executors, &c. or (*Obligamus nos heredes &c.*) not having therein the words either of us, then your original must be, and so your Declaration (that they render to the Plaintiff so much money, &c.) but if the Specialty be, as is most usually, jointly and severally, then must your *Præcipe* be several, and then must you make delivery, and enter so many several Declarations as there are Defendants in your Writ.

* Otherwise it is pleadable in abatements.

Note, that in Actions of Debt upon *Emisset*, for Wares or Merchandizes, or other things upon *Mutuatius*, for money or other things lent upon an *In simul computasset*, Actions of Trespass, Battery, or upon the Case, &c. you are not tyed to any certain day; but you may lay it any time after the date of Action accrued, and before the *Teste* of your Original put in an *Ejectione firma*, the date of the Demise must be your guide, from which you must not vary.

Note, that as I said before, there are some Actions real, some personal, some mixt, whereof some are local, as tyed to the County where the cause of Action accrued, every personal action is an action of Debt, † Trespass, Covenant, Battery, &c. and may be commenced and laid in any County, that soever, according as the Plaintiff pleaseth, although both the Plaintiff and Defendant do dwell out of the same; but every real and mixt Action is to be laid in the same County, where the cause of the said Action arises as before, or where the Lands and Tenements do lye, &c.

† Accounts of Trespas, quare clausum fregit must be local.

The like course must be taken to continue an Issue joyned and entered upon the Roll from Term to Term, as before was shewed in the case of Imparances.

Note, that when you declare upon several Specialties, in the case of your Declaration upon the (*proferat hic in cur.*) you must mention their several Dates, but some think it not necessary.

Note also, that if several Defendants appear by one Attorney, who are bound in a Bond joyntly and severally, if they declare severally against them, yet the Condition must be cited but in one of the Declarations; but if they appear by several Attorneys, you must insert the Condition to the Declarations.

And note, that in many of the fore-going Actions of Debt you shall do very well, & it is the safest way for your Client to make Actions of the Case of them by *Indebitas. assumpti*, where if you prove the Money lent, or Wares delivered, the Law implyes the promise, and in that case the Defendant is barred from waging his Law.

Note, for Rent an Action upon the Case will not lye.

And note further, that if you bring an Action of Debt against one within age, he may plead in Bar that he is * within age; but not if it be for Necessaries, as Meat, Drink, Apparel, &c. there it † is no bar to the Plaintiff.

* For the cause of Action arising when

† That he was within age. *was within age at the time of the contract.*

And in case any one is sued who is within age, he must defend himself by his Guardian; and if he will sue, it must be by his *Prochein amy* or it may be *per Guardian* Hurt, 92.

* Note, If per *Prochein amy*. *by the Specialty the*

Heir be named, otherwise not.

Note, that you may sue an * Heir as well as the Executor or Administrator for the Debt due by the Obligor; but in case you cannot find any Lands to descend unto him, he pleading *Riems per descent*. (that is, hath nothing descended to him) he shall not be charged.

If money be payable upon demand, there in that case must be demanded before you can sue, and the Plaintiff may lay a Demand in his Declaration, and the Action accrues in vertue of that Demand.

Note further, the Law allows of distinctions in these Cases; for when the promise ariseth upon a precedent debt, *lapis requisit*. is sufficient.

Note, that if a man shall bring an Action either upon Bond, Bill, or otherwise, upon which he formerly had Judgment, the Defendant may plead the former Judgment in Bar, and it shall be held good.

Note how and to what Cases you may plead the Statute Limitations, which will guide you to bring your Actions within

in the time limited, or cause you to forbear bringing them at all, all Actions of Debt, Account, Detinue, Trespafs, Replevin, and all other Actions of the Case, unless for words, must be put in Suit within six years after the cause of Action; all actions of Assault and Battery, and Imprisonment, are to be put in Suit within four years after the cause of action, and all actions of the Case for scandalous words, within two years after the words spoken, if in any of these Cases they be brought after the time limited as above, the Statute of 21 Jac. pleaded, is a good Plea in bar to any of them, no time limited for Specialties, *Vid. 2 Inst. 107.*

There are many distinctions, hereupon to be made, too large to be here recited. See Banks his reading upon this Statute.

If a man arrest another, or cause him to be arrested in another mans name, without the consent of the party in whose name he is arrested, the Statute gives an action of debt to the party so arrested.

This is per Stat. 18 El. and it is restrained to arrests out of particular Courts mentioned in the same Statute.

An action of debt lyes by the Stat. of 2 Ed. 5. cap. 13. for a Parson against his Parishioners for not setting out of Tythes, upon which action the Parson shall recover the treble value of the Tythes so carryed away untythed. See for this good learning in 2 Inst. 648. &c. cc.

An action of * debt by the Stat. of 32 H 8. cap. 30. lyes against an Attorney, for not filing of Warrants of Attorney, in the Causes he is towards.

* The Forfeiture is 10. l.

Where no place of payment is set down in a Bond, there the Obligor must be inforced to find out his Obligee to pay him the money. See the Restrictions hereupon, 1 Inst.

We now proceed to Actions of Detinue, wherein we shall need to say the less, for that the same Rules that have been given in Actions of Debt, either in relation to the process or manner of declaring, do hold in this, the one being in the *Debet* and *Detinet*, and the other in the *Detinet* only: And this Action properly lyes where a man delivers Goods or Chattels to another to keep, and the party to whom they were so delivered, refuses to re-deliver them.

And observe, that in this Action of Detinue, you ought to ascertain the thing, as a Horse, Cow, or other Cattel or Chattel, naming them, and making them certain; for that the Plaintiff

Plaintiff is to recover the things detained, and therefore must be so certain, as it may be known; for money delivered in a Bag an Action of Detinue lyes not, but an Action of Account; and your Original in this Action runs thus.

REX, &c Vic. Essex salutem. Pr. J. G. nuper de L. in Com. H. Yeoman, quod juste & sine dilatione reddat. T. B. unam vaccam quam ipse injuste detinet, &c.

If for a mans Evidences of his Land, in a Box or Bag sealed up, in which case also an Action of Detinue lyes, then the Writ runs thus.

Quod juste & sine dilatione reddat. unum pixidem cum cartis, scriptis & aliis minumentis in eadem pixide contentis. quæ ipse injuste detinet, &c.

The Defendant hath not in this Action that variety of Pleas as before in Debt, the most usual Plea being, (that he detain not the thing sued for) and upon this he puts himself upon the Country to be tried, and the Plaintiff in like manner, &c.

Note, this is in case the Jury find not the value upon the Verdict.

Note that in this Case, if the Plaintiff have a Verdict, his Judgment is a Recovery of the thing detained, or the value thereof; in which case, is also where the Judgment is had by

default for want of pleading, there is after the Judgment had, a Writ of Inquiry awarded, to inquire of the value of the thing detained: Upon the return of which Writ of Inquiry, what value the Jury find the thing of, and what damages they give him for the detainer of it, is, together with increase of Costs, entered up for Judgment.

Note, this is but in some cases, & Init. 255. Note that a man may wage his Law in an Action of Detinue, at formerly in Debt was shewed, wherein the same course, for the manner of the Wager of Law, is to be observed as before.

But it is otherwise, in case you declare for one Evidence in special, delivered by the Plaintiff to the Defendant; in this case the Defendant shall not wage his Law, *Vid. But. & Treas. Reports, fol. 29.* some special Case concerning Detinue.

Note,

Note, that in case of Evidences detained, it is not proper for the Executor, nor hath he any right to this Action, but the Heir who is to have the Land.

Note, that if it be of any thing delivered to be kept, whether by the immediate party that brings the Action, or his Father, Ancestor, &c. properly this Action lyes if detained, but otherwise an Action of Trover and Conversion.

In the next place we come to Actions of Account, *Vide Co. Lit. 172.*

THis Action lyes upon several occasions as against one that is Guardian in Socage, against one as Receiver of Moneys, either by way of Rents or otherwise, or as Bayliff of an Office, or as Bayliff in general: In all which Cases, you must be sure to frame your Action rightly, by informing your self for what time he continued Bayliff, Receiver, &c. of what his charge was, and what it amounts unto, and when he entered upon such his charge.

To begin with Guardian in Socage, your Process are by Summons, † *Capias ad computand. &c.*

And you declare upon the Statute of *Marlebridge*, cap. 17. *Quare cum de communi consilio Regni Dom. Regis Anglie Provisum sit. Quod custodes terrarum & tenement. quæ tenent. in Socagio hæred. ter. & tenement. illorum cum ad plenam ætatem pervenerit, reddant rationabilem computum suum de exitibus de ter. & tenementis illis provenientibus de tempore, quo custodiam illam habuerint ratione minoris ætatis hæred. præd. idem B. præfat. A. rationabilem computum de exitibus provenientibus de terris & tenementis ipsius A. in N. quæ tenentur in Socagio, & quorum custodiam idem B. habuit & redum A. infra ætat. fuit, reddere contra dixit, &c.* This full age is 14 years, *Co. Lit. 89.*

† *An Account with Guardian in Socage did lye at common-Law, and the Statute is but in affirm. Co. Lit 89. Common gift with Gardein in socage, Co. Lit 89. 26. Vid. the reason in 2 Inst. 380.*

The intendment of Bayliff, is one that hath the administration and charge of Lands, Goods, or Chattels, to make the best benefit for the Owner; against this person properly lyes an Action of Account, for the profits which have been made or raised, during the time he hath had the care of them, *Vide 2 Inst 380.*

And

And observe this, that a Bayliff may be charged to account, and accordingly doth account, and upon account nothing doth appear to be arrear in his hands, but rather the Plaintiff indebted to him; in which case the Bayliff shall bring his Action of Debt, for the Surplusage of what he hath expended and laid out over and above his Receipts.

If I appoint a man to receive money to my use, to render me an account, I shall have my Action of account against him for the said moneys, he also having his reasonable Expences and Disbursements. Note, *Co. Lit. 172. a.* it must be between Merchant and Merchant, *ibid.*

Where a man declares against one as Receiver of money, and he must ascertain by whose hands the money was received, which lyes not against a Bayliff; * and if the Receipt be from any hands, other then the party Plaintiff, the Defendant shall not wage his Law; but if it be alleadged, to be received by his own hands, and not by another mans hands, in this case the Defendant may wage his Law.

* Or his
wife, or his
Commoigne
1 Inst. 295.

Where there be two Coparceners in Merchandize, that occupy and merchandize in common, by the Statute one shall have his Action of account against the other, they being both named Merchants, *Co. Lit. 172. a. 186. a.*

Where there be two Joynt-Tenants, and the one makes the other Bayliff of his moiety, in this case, he that makes the Bayliff may bring his Action of account.

The Executors of a Bayliff or Receiver are not chargeable with an account: Executor at the Common-Law could not have account, but the Stat. W. 2. cap. 23. gave the Action of account to Executor, the Stat. 25 E. 3. cap. 5. to Executor of Executors, and Stat. 31 E. 3. cap. 11. to Administrators, *Co. Lit. 89. b.*

An Account may be brought against the Collectors for money given to the use of the poor.

Note, that if a man brings his Action of account against one as Bayliff, and the Defendant to his Action pleads, that he was never his Bayliff to render an account, &c. And upon that Issue joyned, and upon the Tryal a Verdict for the Plaintiff; in such case the Judgment is, that the Defendant shall account with the Plaintiff of the time and profits aforesaid, &c. And that he be in mercy, because he did not sooner account.

Upon

Upon this Verdict and Judgment, the Court assigns Auditors, before whom the Defendant is to account upon such a day or time, as the Auditors shall appoint to hear the Account, and in the interim, the party either puts in Bail to account, or otherwise stands committed to the Fleet.

Note, that if the Defendant acknowledge the Action, and that there be Auditors assigned by the Court, in this case he shall not be enforced to put in bail.

There are two Pleas most usual in these Actions of account; the one is, *Quod nunquam fuit Receptor ejusdem quer.* And the other, *Quod plene computavit, &c.*

Note, that the Auditors assigned by the Court, have power upon his accounting, to make him allowance of what reasonable Disbursements and Charges he brings in as laid out; and if after that the Defendant be found over and above in arrear by the Auditors, the Plaintiff may bring his Action of Debt, to which as is before said, the Defendant shall not wage his Law.

In an Action of account a man may plead doubly, as where he stands charged to have received several moneys, several times from divers persons, there he may plead as to part (that he stood not Bayliff, &c.) and as to the other part, (that he hath fully accounted, &c.) Upon the joyning of which Issue, it being double you say, therefore as to the trying as well of this Issue, as the aforesaid other Issue formerly joyned, Command is given to the Sheriff, &c.

Note, that an Action of account lyes against a Church-Warden after he is out of Office, by the succeeding Church-Warden to be brought.

Inst. 8, b. 90. Where an Infant within the age of 14 years, being seized of Lands in Socage-Tenure, a stranger enters into the Lands of the Infant, and takes the profits of the same, though he be not the next of Kindred, nor Guardian in Socage, yet the Infant shall charge him as Guardian in Socage; and it is no Plea for him to deem that he is the next of Kindred, but he must answer to the taking of the profits, the Writ being, that he should render his reasonable account of the Issues and profits, coming of the Lands and Tenements in S. which are held in Socage, &c.

Note,

Upon

* 1 Inst.
90. 4.

Note, that if it be for the profits of the Land, *for the time after the Infant is come to 14 years of age, he must be sued as Bayliff, and not as Guardian.

Note also, that if any man have cause of Action of account, against any as Receiver and Bayliff, and dye, his Executors shall have this Action.

This action may likewise be brought in the County where the cause of action arises; and if so brought, it may be removed into the Common-Bench at the Suit of the Plaintiff by a *Pone*, without shewing the cause in the Writ, but it shall not be removed at the Suit of the Defendant, without shewing cause in the Writ of *Pone*, as if the Defendant have Release, and then it shall be named in the *Pone*, &c.

An Apprentice shall not be charged with an action of account; but if a man have a servant whom he commands to receive money, the Master shall have a Writ of account against him, if he were his Receiver.

The Fees incident to this Action, and the proceedings thereupon, follow in a Table amongst others.

Actions Upon the Case.

These Actions are very numerous, and grounded upon several occasions, as for scandalous words, for promises not performed, for special Nuisances, &c. The process upon them are, first an Original, and then by way of *Capias*, if you can arrest upon the first Process; if not, then you may proceed to the Outlawry, as before in Debt, onely the charge will be more in respect of the length of your Process; and for return of those Writs, you must return, *Quod defend. nihil habet in Bulliva mea unde attachari posset*; this for the Original: And for the *Capias* and other Process, *Quod defendent. non est inventus in Bulliva mea*.

In Actions of the Case for words, you must carefully observe what the nature of the words are, what they import, the manner of speaking of them, and what the party Plaintiff may be any ways damaged by the speaking of them, what his Credit was, and how impaired, & take the whole words as near as you can; and before you bring your action, let the Witnesses set down the words as they were spoken, and as they will be able to prove them, and the time and place when and where they were spoken, and before whom: This action entitles

scarcely, by reason the Attorneys weigh not well whether the words be actionable or not; and many times, though some part of the words taken by themselves may be actionable, yet the subsequent words may qualifie the sense of the precedent; as where a man says of another, that he is a Thief, and hath stoln something of small or no value: For generally, where one stands charged by words for any Theft, which is onely criminal, and not capital, there the party Plaintiff shall never enter Judgment, although he brings his action.

An Action of the Case lyes against the Husband and Wife, for words spoken by the Wife; but in case the Wife be arrested, and not the Husband, you cannot declare.

Note, this is altered by the new Rules.

This Action lyes in these several Cases following.

WHERE one becomes Surety for another at his instance and request upon Bond, and he saveth him not harmless, but the Surety is enforced to pay the money; in this case he may bring his Action upon the Case, wherein he must recite how such a time at such a place, at the instance and request of the Defendant, he became bound to such a one in such a sum, conditioned for the payment of such a sum at a day then to come; and that the Defendant, in consideration thereof, did assume to save him harmless; that notwithstanding the promise aforesaid, he hath been sued by the Obligee, and the w how, and where, and what he is damnified.

It lyes where a Contract is made between two by word of mouth, either for the delivery of Corn, Cattel, or any merchandize whatsoever, and the party that promises so to deliver makes breach.

It lyes for money borrowed, when you would make sure the Defendant should not wage his Law.

Note, that in all Actions of the Case upon special promises, you must be sure to lay a good consideration to ground your promise on, other wise it is said to be *Nudum pactum*, as where it is for money owing by a stranger, and his Friend promises payment upon forbearance, there you must say, That whereas such a one was indebted to the Plaintiff in 40 l. and that for the more speedy obtaining of the said Debt, the Plaintiff intended to implead him; and that in consideration the Plaintiff would forbear to sue or implead the party owing the money for such a time, the Defendant himself would pay it, in case

case the other did not, and alleadge forbearance, &c. *Ra. Entr.*
4. *Co. Entr.* 2 *Ra. Entr.* 11.

It lyes for money promised in consideration of marriage, wherein the Plaintiff must aver that he married her such a time.

To call a man a Bastard if he be the eldest Son, and in a capacity at the time of the words spoken, to inherit an Estate after his Father, and be dis-inherited, an Action lyes.

* *In London.* To call a Maid Whore, or to say she hath a Bastard, whereby the loseth her preferment in marriage, is likewise actionable.

To call a married wife Whore will not hold Action at Common law, but in *London*, by custom it hath.

If a man speaks scandalous words of any, for which Action is brought against him, if the Defendant be able to make proof of the words spoken, he may plead a special Justification, but if he plead such a plea, and makes it not good, the damages will be much aggravated thereby. *Co. entr.* 26.

If the Defendant spake other words than what are laid in the Declaration, he must plead especially, and traverse the words laid in the Declaration.

Where the Defendant pleads the general Issue, which is, *Not guilty*, for words scandalous, &c. there it rests on the Plaintiffs part, to prove the words as he hath laid them.

It hath been usual, and yet is the course *This course was begun in Judge Reeves time.* to arrest upon a *Clansum fregit*, and then upon filing a new Original, to declare specially in an Action of the Case.

It lyes for the hire of a Horse, which is returned back, and the Hire unpaid.

It lyes likewise where a man abuseth a horse by immoderate riding, or otherwise by misusing of him.

The party likewise that hires a horse, if he have given earnest for the horse, and that it be promised him, it shall be delivered unto him by such a time, and then he refuses to deliver him, whereby he is disappointed.

It lyes for a Master against his Servant, for leaving off his service, before the time contracted for be expired.

Likewise for a Servant, in case the Master without just cause shall turn him out of service, before his time be expired.

It lyes for a mutual Contract made between two by word of mouth, and to bind the same, a piece of money is given by the

the one to the other in earnest; now if either will not perform what is agreed upon, the other may bring his Action of the Case.

It lyes, where a man upon sale of sheep, warrants them to be sound, and they prove rotten, or otherwise unsound. *The Warranty must be express.*

An Action of the Case lyes where one sells a Horse, and warrants him to be found, & the Horse proves to be unsound at the time of the sale.

It lyes against a Farrier, who shoes a Horse & pricks him, whereby he grows lame, *reg. 1 c 6 b hub 9.*

It lyes where a man is a Goaler, and lets a Prisoner at large, and this as well as escape.

Where a man hath made a Distress of Cattel, &c. and is driving of them to the Pound, and another comes and recues them, an Action of the Case lyes.

It lyes against any that shall intice his Covenant Servant from him.

* If a man lose Goods brought into a Common-Inne, or Holsry-house, an Action of the Case lyes; F. N. B. 94. b. ** See some differences between*

If a man deliver Goods to a Carryer, and agree upon the rate for carrying; and they are lost and miscarried, an Action of the Case lyes. *Co l. 8. j. 2.*

It lyes for stopping of a Water-course through his Croud, whereby the Plaintiff watred his Beasts, and did other necessities; and if this be stopped either by Stones, Turfs, or otherwise diverted, an Action of the Case lyes.

If a man stop up a * Way, whether Cart-way or Foot-way, and another hath right to that way, and can prescribe to it as a common Highway. ** Not unless it is a common Highway.*

Where a man is to pay money, and gives a Bill of Exchange which is not excepted, but afterwards comes to be revokted, an Action of the Case lyes.

Where a man sells another mans Cattel or Goods, or merchandizes, and warrants them to be his own, an Action of the Case lyes.

An Action of the Case lyes against a Taylor, who doth undertake to make Cloaths, and spoils them, so that they are not useful for the party they are made for.

It lyes against an Executor, upon the promise of the Testator, provided there be a consideration to ground the promise.

It lyes in the behalf of a Commoner against any that hinder him from the use of his Common.

Where a man hath an Office granted unto him, and another either disturbs him in the Execution of his place, or otherwise receives the profits due to the Office, an Action of the Case lyes, *Co. lib. 9.*

It lyes against a Cheat, for playing with false Dice, *F.N. B. 95. d.*

Where a man disturbs the keeping of a Court-Leet, an Action of the Case lyes, *33 H. 6. 16*

It lyes against an Under-Sheriff for an ill or false Return.

It lyes against an Under-Sheriff who makes return of Writs within any Liberty granted to another.

It lyes on the behalf of a Physician or a Chirurgeon for Physick, for performing a Cure.

Where a man builds a house so near his Neighbours, or raises any Shed, or other Out-house, or layes Piles of Wood or Stacks of Hay or Corn so near his Neighbours Windows, that they stop up his Light, an Action of the Case lyes.

And for any other Nuisance, whereby a man is any wayes damnified, as where a man builds a Stable or Privy-house near his Neighbours house, that the smell thereof annoys him.

It lyes against an Under-Sheriff, for taking greater Fees than is allowed by the Statute, if he be not forced to bring his Action upon the Statute of *H. 6.*

It lyes against one who shall break down a mans Wall or Slace, whereby his Land comes to be drowned.

21 H. 6. 22. It lyes for selling corrupt Wine without warranting it to be

19 H. 6. 49. good, for that it is prohibited by Law. Note, by *Fitz. Na. 7*

H. 4 76. 94. c. the Action will not lye without special Warranty.

It lyes where a man hath pawned Goods, and tenders the money due, and demands his Goods, and it will not be accepted, *Fitz. 89. c.*

It lyes for not carefully keeping Fire, whereby a mans house, who is a Neighbour comes to be burned, either in part or whole.

* Note, it It lyes for digging of Lime-Pits.

must be laid It lyes * against one for keeping a Dog that worries sheep either ad mordent. confluent. or suent. retinuit.

It lyes for a Solicitor for his Disbursements and Fees.

It lyes so many several ways for promises, as that they are not to be named in particular, but are to be drawn as the case falls out; onely observe some particulars following.

It lyes where a man, for money lent, upon forbearance promises to become Security.

It lyes upon a promise to pay money for Land contracted for.

It lyes against any one that makes an Arrest in a Liberty not being Bayliff.

† It lyes for the Lord of a Mannor in ancient Desmesne against a Tenant, that levies a Fine above in the Common-Pleas

† Note, that an Action of Disceit is the most proper.

It lyes in the nature of an Action of Conspiracy, for one Indicted of Felony, and afterwards acquitted.

It lyes against a Steward of a Court, for not taking Security in Replevin.

It lyes against the Husband and Wife for Meat, Drink, &c. had by the Wife before the intermarriage.

It lyes for a Keeper of a Prison, for Meat and Drink had by a Prisoner.

It lyes against an Attorney or Clark of the Kings-Bench, for appearing or filing a Bail without Warrant.

It lyes likewise against an Attorney, that shall do any act in any mans name, whereby the party is prejudiced in relation to the Law, without Warrant had.

It lyes for erroneous prosecuting a Writ of Execution.

It lyes also against an Officer, who takes money by Extortion.

It lyes for a Rescue made upon a *Capias*, or other Process whatsoever.

It lyes against the Sheriff, for not returning a *Venditioni exponas*.

It lyes likewise on the behalf of an Executor against an Under-Sheriff, for returning falsly a *Devastavit*.

Note, If the Sheriff return a *Devastavit* upon a *Scire Facias*: but not upon *Devastavit* returned upon a *Scire Facias*, and enquired, &c.

If a man sells Cloaths, and warrants them to be of such a weight, if they hold not out accordingly, he which buyes them, may bring his Action upon the Case.

If one take a mans Cattel, and another take them from him, an Action of the Case lyes by way of Trover and Conversion for the Cattel.

An Action of the Case lyes against Tenant at Will, who commits wast by burning houses, or pulling them down, but not an Action of Wast.

Neither Action upon the Case, nor Action of Wast lyes against him, for permissive Wast, but for voluntary Wast a general action of Trespas will ly, *Co. 5. Rep. 13.*

An Action of the Case lyes against a Bayliff for killing or spoiling any of his Masters Cattel, *Co. 5. Rep. 14.*

If a man deliver to another his Sheep to dung his Land, or his Oxen to plough his Land, and he killeth them, an Action of the Case lies.

An Action of the Case lies against a Sheriff, where the Plaintiff hath a Charter of Exception, that he shall not be impannelled upon any Jury, and shewes that to the Sheriff, and yet he impannels him.

If the Sheriff upon a Writ of second deliverance to the Plaintiff of the districks, will not return the Writ, so that the Defendant may constrain the Plaintiff to come and declare, so that he may avow, the Defendant shall have his remedy by Action of the Case against the Sheriff.

Action of the Case lyes against a Sheriff, where he makes a *Præcipe* to one who is no Bailiff of the Franchise, who returns a Jury which is quashed, to the damage of the Plaintiff.

Where a Guardian pleads safely for an Infant, or vouches one who is not sufficient to render in value to the Infant, the Infant shall have an Action of the Case.

An Action of the Case lyes against a Chyrurgeon, who undertakes to cure a man of a wound, and neglects it, whereby a man grows worse, and makes it through his negligence incurable.

Where a man promises in consideration of an hundred pounds, or any other sum in hand paid, to enfeof another such and such Land, by such a day, and doeth it not, he shall have an Action upon the Case.

There are many other Cases wherein Action of the Case lyes, which cannot be certainly recited, in respect of the various occasions of them; but in these before recited, and all others, the proceed is one and the same, onely your Declaration

must vary as your Case requires, after your Declaration drawn, upon appearance made, you deliver it to the Attorney for the Defendant, and most usually with an Imparlanee; which done, you enter it accordingly so that Term you deliver your Declaration, upon one to the *Prothonotaries* Rolls, and then Docquet it, & keep the Number-Roll by you, whereby you may be able to continue your Imparlanee if need be.

The Term following, you give a Rule within some short time of the beginning of the Term, with the Secondary of the Office for the Defendant to plead by such a day, or otherwise the Plaintiff have Judgment. Or enter it your self upon a Common Remembrance, if a Clerk of the Office.

There is not much diversity of pleading

* to this Action; the most usual Pleas are either *Not guilty*, or in case of Promises, *Non assumpsit*.

* *Note*, Not guilty, is a good Plea in an *Ast* on upon the Case Sur Promise.

Either of these being pleaded, you make up a Copy of the Issue, and deliver it to the Defendants Attorney, who is to pay for the Copy of the Issue, as before for the Declaration, four pence for every sheet, and also to pay for entering his Plea two shillings; that done, if you intend to try it, you must give warning to the Attorney of the Defendant when you intend to try it, and in order thereunto make out your *Venire Facias*, and get it returned by the Sheriff, and then sue out your *Habeas Corpora*, and so proceed to the making of your Record; and in all other things, both before, at the Tryal, and after, as you are directed before in the case of Debt.

But in case they plead not, but let it go by default, then upon the entering up of your Judgment you are to award a Writ of Inquiry of Damages, returnable, some return of the Term * following, which done, you

make out your Writ, and procure it to be signed with the *Prothonotary* and when seal it, and be careful to keep your Number-Roll, likewise of your Judgment when you have Docquetted it.

* *Or of the same Term.*

Note, That you are to give Notice to the Attorney of the Defendant of the time when you intend to execute your Writ of * Inquiry, if you

* *Else your Inquiry will be advised.*

A. d

And having so done, and brought your Writ under Seal, delivered it to the Sheriff, you may proceed upon it according to the time agreed on.

The Sheriff is to summon an Inquest, who are to inquire what Damages the party Plaintiff hath sustained, as also for his Costs and Expences of Suit.

The Inquest having passed, the Sheriff drawes a short schedule, and annexes it to the Writ of Inquiry, and returns the Writ of Inquiry, which is called an Inquisition, which he delivers you upon payment of his and the Juries Fees.

Having your Writ of Inquiry thus returned, and the Inquisition annexed, you must bring it to the Prothonotaries Office, and there take it out in the common remembrance, together with the Return and Inquisition, and give a Rule upon it, which done, and the Rule out, you carry it to the Prothonotary, and he taxeth your Costs, and then you pay him for it, and carry it to the Clark of the Judgments, and be sure you give him likewise your number Roll, and Term, when the Judgment was entred, and he will make you out, either a *Capias ad satisfaciendum*, or a *Fieri facias* for your damages and costs. The Fees incident to this Action. will follow.

Actions of Trover and Conversion.

THIS Action is called also an Action of the Case, and differs not at all in the Proceedings from what hath been said before, in Actions of the Case.

It properly lyes where the Defendant hath found any of the Plaintiff's goods, and refuseth to deliver them upon demand, or where the Defendant comes by the Goods, by the Delivery of any other then the Plaintiff, wherein he shall recover as much damages as the goods are worth.

It is not as in an action of Detinue, that the thing itself, whether Goods or Cartel shall be recovered, but Damages to the value of them.

Note, That a demand is absolutely necessary to the action before it be brought, Where the Plaintiff cannot prove conversion.

In this action if the Defendant plead that he is not guilty, which is the most general Plea in this action, the property of the goods must be proved to have been in the Plaintiff, before such time as they came to the Defendant his hands.

This Action is now very usual, and takes place instead of actions of Detinue, for in them the Defendant was at liberty to wage his Law, whereas this debars him.

In many cases a special justification may be pleaded to an action of Trover, as where a man justified the taking of it as a Stray, and refuseth not to deliver it, being a Horse, Sheep, or the like, upon payment for their Meat and keeping.

Many times in this action, the Arrest is made upon a *Clauſam fregit*, and then file a new Original, and so declare in Trover, or in case you cannot arrest, you may sue to an Outlawry.

Where a man brings his action of Trover and Conversion against another, with whom he finds any of his Goods lost or purloined, here if the Defendant bought them in open Market or Fair; and that they be tolled in the Book, this alters the property of the goods, and I can never recover them; but this must be specially pleaded.

Otherwise it is, where they are bought privately and not in open Market or Fair, by this there is no property altered.

It is generally held, a man's shop is said to be open Market; but if Plate be stolen and sold to any other Tradesman, or in any other* shop, than the Goldsmiths to whom it is proved to * Note if is buy it, it hath been held the property is not altered, but that be sold pri- the Party losing it, may recover the value of it in Damages vately in a by action of Trover. Goldsmiths

All the proceedings in this Action are generally the same shop, yet an immediately before going in all particulars, whether it be by action of trial at the Assizes, or by Writ of Inquiry; which Writ of Trover will Inquiry, Inquisition thereupon, (as that also in case) are to lye. be filed by the Clerk of the Judgments, with the *Custos* *Revinum*, after Judgment entred up.

In this Action you must be careful of the days when you lay the Plaintiff to be possessed, and what time after you lay it to be lost, and what time after the Conversion.

Actions of Trespass and Battery.

THIS Action lyes where a man assaults another, and strikes kicks, beats, or doth him any manner of violence, either with hand, foot, or with any weapon, or throws any thing at him or upon him, whereby he is hurt.

The Writs in Battery are by way of Original *Capias*, alias, &c. If not arrested upon the first Proces, you may take out a

Capias by continuance, or otherwise sue to the Outlawry.

Your original Writ runs thus : *Quare vi et armis in ipsum L. apud L. insultum fecit & ipsum verberavit vulneravit & male traxavit. Itaque de vita ejus desperabatur et alia enormia ei intulit ad grave damnum ipsius (quer.) et contra pacem.*

In some cases you adde (after *vulneravit & imprisonavit.*) in case the party were kept in Prison ; and then in the Count you name for what time.

In case you have the Party arrested, you must inform yourself of the time when the Battery was done, and what the manner of the Battery was, and with what Weapons, and whether the party were Imprisoned, and what damage your Client sustained.

This done, and having an appearance (which is usually made on the Philizers Roll, if the Attorneys take not one anothers word in the Country, or put their hands to the Sheriffs Warrant for to appear according to the return of the Writ) you draw your Declaration, which is no more but a recital of the Writ above ; only in the second place, when you come upon the Writ, you are to insert the time ; and when you say by force and arms, you then add (that is to say, *cum gladiis baculis & cultellis*) and if the party were imprisoned, you then shew, how long, and whether he were forced to pay a Fine for his redemption, your declaration drawn must be delivered to the Defendant's Attorney, as before in Case, &c. And you must enter it with an Imparlance, if you give one.

And you are to give Rules, the Imparlance out, and call for answer, and make up your Issues or for want of pleading, enter up Judgment by default, and take your Wait of Inquiry : in all things observing the Rules before given, either for tryal or proceeding with your Writ of Inquiry.

The general Plea to this action, is *Not guilty*, but there are several other Pleas, in Justification of a mans self, as where it is done in defence of a mans person or Goods ; also a man may justifie in the defence of the person of his Wife, Father, Mother, or Master : But note, that if it be not in these Cases, or in the Maintenance of Justice, if he be not constrained by a necessary cause, he is punishable if he beat another.

If a man come into anothers House against his will, and there offer violence to his Wife, Children, Servants, or to any of his Goods, he may lawfully thrust him away, to his

him; and if he bring an Action in such case, he may plead specially as the Case was, and conclude that to hinder him, or put him out of doors, he did (*Molliter manus imponere. &c.*) that is, softly lay his hands upon him.

To all such special pleas it is usual they should be pleaded under Counsels hands.

Where a man for preservation of the peace, goeth about to part a Fray, by holding either of the parties from striking, in case the party that was so holden, do bring an Action of Battery, the Defendant may plead specially, That to preserve the person of one from killing, and preservation of the publick peace, he did come in aid to him, and did softly lay his hands upon him.

To this the Plaintiff may reply, That he did it (*de injuria sua propria absque tali causa*) and then the Defendant must maintain his Plea, with an (*ut prius dicit.*) And of this he puts himself upon the Country, &c. *Vid. Co. h. 8. Cugates Case, 67.* where *injuria sua prop.* sans tiel cause, is good, where not.

There is a Plea called (*Son assalut demesue*) which is where a man justifies in his own defence, as being first struck, which falls out to be very frequently pleaded. Thus much for Battery.

Of Trespas in general.

THese are the most general Actions next Actions of Debt, that are brought, and vary in the original Process and Declaration, according as the Trespas is, and the cause of Action thereby accrued.

It may be brought for breaking the Close, without adding any manner of other Trespas.

Sometime for breaking both Close and House, in which case the Original is; *Quare vi & armis clausum ipsius (quer.) apud L. fregit, et alia enormia, &c. Et contra pacem, &c.*

You may lay it for several Trespasies at several days, or one Trespas with (*a Continuanda*) that is, continuing of it for some certain dayes or weeks, from the time laid in the Declaration.

It lyes for chasing of Cattel, whereby they either dyed, or were bitten or worried with Dogs.

It lyes for taking away of Pales, Posts Rails, breaking of Hedges or Fences.

It

It lyes for digging in a Leaden Mine, and taking away the Oar, or for breaking the ground, and digging there.

Where a man breaks another mans Dove-Cote, and takes away Pigeons, an Action lyes.

For drawing a Cart and Horses over any mans Ground, where there can be no way prescribed for, an Action of Trespass lyes.

It lyes for fishing in another mans Ponds, and for breaking the Pond, and letting out the water.

For chasing in a free Warren, an Action lyes.

For breaking of a Close, mowing of Grass, and eating of Corn with a mans cattel, this Action lyes.

For Trespass done in a Garden, by plucking up by the Roots, *Rosemary*, *Lavender*, and other Herbs.

It lyes in the behalf of a Minister, against any that hinder or oppose him, in carrying away of his Tythes.

* Note, This It lyes for * impounding a Horse or other Cattel, and not giving them sustenance in the Pound.

It lyes for taking away Hay in cocks, and Corn in sheafs.

It lyes for taking of Horses or any other like cattel, where in you say (*pretii viginti librarum*, &c.) or if Goods and Chattels, then you say *ad valentiam*, &c.

It lyes for breaking of the Doors, Windows, Walls, or other forces of a House.

An Action of Trespass lyes, where one having right to a Toll in a Market, employs his Servant to gather it, and he is disturbed in it.

It lyes likewise where a man hath right to keep a Fair, and is hindred.

It lyes on the behalf of one that hath return of Writs within his Hundred, and hath a disturbance by any.

And where a man hath right to keep a Court Baron, and is any ways disturbed, this Action lyes.

For digging in a mans Coal-Mynes, and carrying away Coals and for digging in a mans Quarries, he shall have his Action.

WE have now given you some particular hints, in what case an Action of Trespass lyes, I shall now proceed to the Processes thereupon, which, as I told you, are by Original in the first place, *Capias* in case you can arrest them, or otherwise to the Outlawry.

* Note, This must be under Flood of such Pounds, as where the party cannot come to give his cattel meat, viz a close Pound, Co. Lit. 47. b.

If you arrest the party, and have appearance, you must draw your Declaration, wherein you must be sure to take perfect notice from your Client of the day when the Trespass was done, that so you may lay it to be done before the *Teste* of your Original, and likewise how long the Trespass continued, that so if there be occasion, you may lay it with a *Continuando*, and whether there were not several Trespasses at several days, and the place where the Trespass was done, in what Town or Parish, for from thence your *Venue* must rise.

To this Action, the most general Plea is, Not guilty, yet is there much special pleading by way of Justification, or otherwise, but most usually that is after the common Barre hath been pleaded in an Action of Trespass, and that there be a new assignment of the place, then they plead as to the Trespass in the place of new assignment, either in justification for a Foot-way, or a Cart-way, or some other special Plea, &c. Or, Not guilty to the New Assignment: This New Assignment is used very oft, to clear a Title, which upon it comes in question; here in case the Title appear to be the Plaintiffs, he shall recover Damages.

This Action brings to the party Plaintiff if he recover, Damages, but not recovery of any Possession, as in the case of an *Ejectione Firme*.

All manner of Proceedings after the Declaration any ways had, relating to this Action, whether by Tryal of *Nisi prius*, or Writ of Inquiry, upon default or confession, are altogether the same with what hath been delivered, as to Actions of the Case.

Actions of Covenant.

THis Action lyes where an agreement or Compact, is by Deed, Articles, or other Writings, sealed between two persons, where every of them is bound to the other, to perform certain Covenants for his part, and if the one of them holdeth not his Covenant, but breaketh it, then he which findeth himself aggrieved, may have thereupon a Writ of Covenant: And Covenants are either in Law or Fact.

A Covenant in Law, is that which the Law intendeth to be done, although it be not expressed in words, as if a man demise any thing to another for a certain term, the Law intendeth a Covenant of the part of the Lessor, that the Lessee shall hold

hold all his Term against all lawful Incumbrances.

But if afterwards in the Deed there be a special Covenant to enjoy or the like, it is adjudged in *Noke's Case*, that the expresse Covenant takes away the Covenant in law, but there have been opinions to the contrary since that case. *Vide. Bol, 4.*

Covenant in fact, is that which is expressly agreed between the parties.

Also there is a Covenant meerly personal, and a Covenant that is real, as sayes *Fitzherbert* in his *Natura Brevium*, Fol. 145.

Covenant real, is where a man tyeth himself to pass a thing real, as Lands or Tenements, where a man covenants to levy a fine of Lands, &c.

Covenants meerly personal are, where a man covenants with another by Deed, to build a house or to serve him.

Note well, That no Writ of Covenant shall be maintainable without especialty, but in the City of London, or in some other place privileged by custome or use.

Note, That a man may bring an Action of Covenant upon a Letter of Attorney,

Where a Covenant personal is made to any, and the Covenantor dies, the Covenant being unperformed, here his Executor shall maintain an Action of Covenant.

The heir shall likewise maintain an action of Covenant, where one had covenanted by writing with his Father, to Enclose him in certain Lands, and doth it not.

The Process incident to this Action is an Original, which is a Summons, for in this action as in Debt, you say) was Summoned and not attached)

Your Original runs thus; *De placito quod ten. (quer) convencion. inter eos secundum vim formam & effectum quorundam Indentur. inter eos fact.*

After your Original taken out, you may have a *Capias*, and if you arrest him not upon the *Capias*, you may proceed to the Outlawry, as in other cases.

Upon appearance had, you must declare as in the example following, wherein you must observe, that in this action as in debt, you have (an *Alias dictus*) which must be made literally to agree with the Indenture.

Essex. ff. **I** G. nuper de &c. alias dictus *Johannes Glouvi*,
gent. summ. fuit ad respondend. E. M. de placito
quod ten. ei conventionem inter ipsos fact. secundum vim;
formam & effectum quarundam Indentur. inter eos confectar.
&c. Et unde idem (E. per T. G. Attorn. suum dicit quod
cum per quandam Indentur. fact. (tal die & anno & loco)
inter ipsum E. per nomen E. de &c. ex una parte et præd. J.
ex altera parte cujus alteram partem sigillo præd. J. signat.
præd. E. hic in Cur. profert. cujus dat eisdem die & anno tes-
tat. (*reciting the whole Indenture*) usque inde prout per eand.
Indentur. plenius apparet. Et idem E. dicit quod licet ipse
perimplevit & performavit omnes & singulas conventiones &
concessionones in Indentura præd. superius spec. ex parte sua
perimplend. et performand. præd. E. in fact. dicit. quod inter
prædictos septem annos post confectiorem Indentur. præd.
vig. tali die et anno quandam J. D. Arm. tunc existen. Concil.
erudit. ipsius præd. E. & B. præd. in t. om. præd. devisat. &
casat. tore scriptum pro ulteriore assuranc. Clam. præd. cum
pertin. faciend. et prefat. E. quoddam scriptum relaxationis
clam. præd. cum pertin. faciend. eidem E. per prefat. J. quo
quidem scripto continetur quod præd. J. remiserit relaxavit,
& perpetuo pro seipso hered. suis quiet. clam. præfat. E. et he-
red. suis tot. jus titulum & clameum quæ ipse habuit vel ad
aliquod tempus extunc sequend. haberet de et in præd. clauso
cum pertin. Et idem E. postea eisdem die & anno apud C.
præd. requisivit præfat. J. sigillare & ut factum suum delibe-
rare prefat. E. præd. script. relaxationis in formam præd. devi-
sat. sit præd. J. ad hoc faciend. hinc & ibidem omnino recu-
savit contra formam Indentur. præd. prædictus tamen J. licet
sepius requisit. conventionem præd. non tenuit pro eo quod
ipse præd. J. & hered. sui et omnes personæ & hered. sui cla-
meum in vel per præd. J. ad aliquod tempus durant. spatium
præd. septem annorum pro rationabili demand. inde eisdem
vel aliquibus eorum faciend. fecerit permitteret et cognoverit
vel cavaret faciend. permis. & cognoscend. omnia et singula
act. & acta rem vel res pro melior & ulterior. assuranc. et
certe fac. premissorum cum pertin. prefat. E. et assign. suis prout
per Concil. erudit. ipsius præd. E. & hered. et assignat. suorum
rationabiliter esset devisat. sed ille tregit et conventionem te-
ner. eidem prefat. E. hucusque contradixit et adhuc contradic.
unde dic. quod deteriorat. est et damnum habet ad valenc.

Ducenta-

Essex.

Dūcentarum Librarum & inde produc. ſectam, &c.

Et præd. J. per F. N. Attornat. ſuum ven et defend. vim & injur. quando &c. Et dic. quod præd. E. non requiſivit præd. J. ſigillare, et ut factum ſuum deliberare præſat. E. præd. ſcriptum relaxationis et ulterior. aſſuranc. præd. clamei cum pertinen. præſat. E. faciend. prout præd. E. per narrationem ſuam præd. ſuperius ſuppon. Et de hoc pon. ſe ſuper patriam. Et præd. E. ſimilit. Ideo præc. eſt Vic. quod venire faciat hic in Craſtino Sanctæ Trinitatis duodecem; &c. per quos, &c. Et qui nec, &c. ad recogn. &c. Quia tam, &c.

Obſerve by this Iſſue you ſee joyned, that where the Defendant takes iſſue; you ſay (*ponit ſe ſuper patriam*) and where the Plaintiff takes the Iſſue, you ſay, (*et hoc petit quod inquiratur per patriam.*)

In this Action you recover Damages aſſeſſed by the Jury for what you are damniſied, by the breach of the Covenant and coſts of ſuit.

Note that an Adminiſtrator may have an Action of Covenant as well as an Executor, and the Writ of Covenant ought to be brought in the County where the Deed is made; but if it be brought in another County, than where the Deed was made, the party Defendant ſhall not have a Plea in bar to the Writ, unleſs that the Deed bear date in another County.

A Writ of Covenant alſo lyes againſt Pledges, who become ſureties that another man ſhall perform a Covenant.

The Aſſignee of the Leſſee ſhall maintain an Action of Covenant againſt the Leſſor, although he be not ſpecified in the ſaid Deed of Covenant to be an Aſſignee.

See in *Spencers Caſe* 5 *Rep.* where an Aſſignee ſhall be bound that is not named, and where not.

HAVING given you before, an Iſſue joyned in an Action of Covenant, you are (in caſe you proceed to tryal) to make out your *Venire facias*, as in others, with this difference, onely that you ſay (*de placito Conventionis fraſt.*) and then your *Habeas corpora* and the reſt of your proceedings in order to tryal, as before in other Actions.

But if after your imparlance and rule being out, the Defendant plead not, you muſt take your Judgement by default, which

which is to be signed by the *Prothonotary*, and then you are to have your Writs of Enquiry which be awarded upon your Judgement-roll, and signed by the *Prothonotary*.

There may be one or more Breaches assigned, as the case may require.

But in an Action of Debt upon Bond for performance of Covenants, he can assign but one.

The reason is, because every Breach is a forfeiture of the Bond.

NOW because within the title of that covenant real, fall Writs of Covenant, it will not be amiss to insert here the Form of suing out a Fine.

And first, How to acknowledge a Fine at the Barr in Court.

IN the first place you are to take notice, that it is in the parties Election, whether they will acknowledge a Fine in open Court, or before the Lord Chief Justice of the *Common-Pleas* at his Chamber, or elsewhere out of the Court, as before some Judge of the same Court, or before the Justices of Assize in the Countrey, when they go a Circuit, or before Commissioners in the Countrey, by vertue of a * special * *The Dedimus potestatem*, to give them authority to take the knowledge thereof, none of all those saving † the Lord Chief Justice having power to take without *Dedimus*, &c.

*mus is by the Statute of Carlisle.
† This by*

If the acknowledgment be to be made in open * Court, you the Lord must have your Writ of Covenant made by the *Cursitor*, and Chief Justice then compound it at the Office of Alienation, where it must *stice is held* be likewise indorsed and entred, and so fitted for the Seal, to by some. which must be annexed your *Præcipe*, and concord in Parch- * *Note, if* ment, which you must deliver to some one of the † Sergeants the Lord at bar to draw it for you, and then you pay him three shillings Chief Justice four pence, and the other Fees payable in Court are certain, *stice be in* and are not great; for by the acknowledgment in Court, the Court, you Client saves divers Fees and charges which otherwise the cap- *must have* tion would cost. *your Writ of*

Covenant

under Seal, if he be not there, you may pass the Fine at Barr without it.

† *The Sergeant actually hath but 2 s.*

The

The Caption being past, you proceed with your *Pracipe*, and concord, and Writ of Covenant, through the Alienation Office, Kings Silver, *Custos Brevium*, and Chyrographer, as hereafter is shewed in other acknowledgments, and warrant of Attorney.

How to acknowledg a Fine before the Lord Chief Justice.

IF you would acknowledg your Fine before the Lord Chief Justice of the Common-Pleas out of Court, first draw your *Pracipe* and concord in a sheet of paper, and then bring the parties that must acknowledg the Fine to my Lords Chamber and deliver your *Pracipe* to my Lords Clerk of the Fines, who will read it to them in presence of my Lord, and their hands being first set to it, they acknowledg it before my Lord, and he putteth his hand to it.

The Fee of my Lord Chief Justice is; 11 s. 8 d. which being paid by you or your Client to my Lords Clark, after the acknowledgment, the Clark will afterwards ingross the *Pracipe* and concord in Parchment, and get my Lords hand to that which you must fetch from him, and give him his fee for the ingrossing thereof. That done, you must carry it to the Curfitor of the Shire where the Land lyes, and leave it with him to make a Writ of Covenant by, when the Writ is made, before you pass it under Seal, you carry it to the Alienation Office, where you are to pay a Fine for licence or leave to alien, and there it is you must make your composition, which is set by the Commissioners sitting for that purpose, and that you may do it with the less charge to your client, you must inform your self of the value of the land by the year, and in case there have been a former line, if you have it not, to know the term when it was, and in case you inform the value, there is one sits purposely with the Commissioners to take it, who was formerly a Doctor, you must by entreaty, persuasion or otherwise draw the fine to be set at as low a rate as possibly you may.

The value being set down by one of the Commissioners, if it exceed forty shillings, (for else there is nothing to be paid) you must go to the Receiver in the same Office, and pay the fine so assessed, which is the Kings silver, for the Kings licence; which Licence the Clark of the Kings silver entreteth, and

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is hereafter shewed; when the mony is paid, the Receiver will set his hand to the back of the Writ, then give it to the Doctor to sign, who hath four pence; as I take it, for his hand; then get the hands of the two Commissioners to the back of the Writ; which done, you must carry it to the Clerks there sitting, to be endorsed and entred.

This being done, you bring back your Writ to the Confi-
dor, and he will get it sealed, and then you pay him the Fee
of two shillings six pence; then having broke it open, you are
to return it as follows:

The Return.

Johannes Dob.

Pleg. de prof.

Richardus Roo.

Johannes Fenn.

Summon.

Richardus Fenn.

A. B. Ar. Vic.

This is now by a late erected Office done by an * Officer, * This Of-
who takes for the doing of it, and making an entry of it, 1 s. 6 d. *Office is erect-*
ed by the

Note, You are to file a Warrant of Attorney with the Stat. of
Clark of the Warrants where your Writ of Covenant must be 23 Eliza
signed; which Warrant is as follows, (the Shire in the Mar-
gin)

W. G. Pon. loco suo J. H. ad prof. breve summi de Com. ver. Essex. ff.
for T. L. de terris & tenementis in A. & B.

That done, file your Writ of Covenant and your Concord
which you had from the Lords Clark together, & carry them
to the Custos Brevium his Office in the Temple, to the Clark
who dealeth for that Shire, and leave them with him to enter
in his Book; and to endorse the Writ. When he hath done,
fetch them from him, and pay him for the same, 2 s. 8 d.
Then take them and carry them to the Kings-silver Office;
enter the Kings-silver; which is the Fine for the value which
you paid to the Receiver in the Alienation Office.

The form of his entry you may see in the Rolls of the Kings-
Office; amongst the Plea Rolls of any Term in the Trea-
sury

jury at *Westminster*, his Fee is for entring of it 10 *d.* or other fees, &c. which when he hath done, you must fetch it away, and deliver it to the Secondary in the Chirographers Office, who takes it forth in his Book, and hath for his fee 5 *s.* 8 *d.* if it be in the Term; but if it be not in the Term, then you must give him six pence more, which he will have for allowing the Proclamation in the same Term: That done, you must in the same Office deliver it to the Clark of the Office, who is appointed to write for that Shire wherein the land lyes to ingross, he hath for ingrossing of it 2 *s.* 6 *d.* if small; but if great 3 *s.* 6 *d.* or more, in case it be exemplified.

When your Fines are ingrossed, which are by way of Indentures, get one part from him, and deliver it your Client to keep.

In making up your Clients Bill, you alwayes take for your own Fee, as allowed for your pains, six shillings eight pence.

*How to acknowledge a Fine before a Judge out of Court,
by Dedimus Potestatem.*

YOU shall proceed in taking the acknowledgment, and in passing the Writ of Covenant thorow the Alienation Office, in like manner as is before shewed; which being done, and delivering your Writ back to the Curfitor, you must bespeak a *Dedimus Potestatem*, which the Curfitor must make; and when you have your Writ of Covenant and *Dedimus Potestatem* under seal, you must deliver the *Dedimus* to the Judges Clark of the Fines, and he will ingross the *Præcipe* and *Concord*, as before is shewed, and return the *Dedimus*. and get the Judges hand to it: which *Dedimus* so returned, *Concord* and Writ of Covenant you must annex together, and pass them through the *Custos Brevium*, Clark of the Warrantry, Clark of the Kings silver, the office of Inrolments as 'tis termed, and the Chirographers Office in like manner as is before shewed: The costs of Proceeding and Fees being all one, more than this, that you pay to the Curfitor for your *Dedimus Potestatem*, 9 *s.* 2 *d.*

The Compleat Attorney.

99

How to sue forth a Fine to be acknowledged before Commissioners in the Countrey, by especial *Dedimus Potestatem*.

W Here in regard of the Cognizors debility of Body, or remoteness from London or *Westminster*, or other occasion, you are to sue out a Fine, and pass it by special *Dedimus*, inabling Commissioners in the Countrey to take the acknowledgment; you are to proceed as followes:

First draw your *Pracipe* in a sheet of Paper, as a Note for the Curfitor to draw the *Dedimus* by, then ingross your *Pracipe* and *Concord* in a fair peice of Parchment; and go therewith to the Curfitor of the Shire where the land lyes, and upon your *Pracipe* in paper insert your Commissioners names, which must be four in number, whereof one at least must be a knight; and get him to make your *Dedimus Potestatem*, for which you must pay him 24 s. 2 d. and in paying of him (for he takes for them all) you pay a Fine, and for a Judges hand, and for the Master of the Rolls his hand, which hands must be had before it be sealed, and then having it under seal, deliver it so, and the *Concord* before any two of the Commissioners named in the *Dedimus*; and your Cognizors being present, let them take the *Caption*; as is before shewed: Which being done, they must return the Writ of *Dedimus*, and their Execution thereof in manner and form following on the back of the Writ:

Executio istius brevis patet in quadam schedula huic brevi annexa.

And they must write the day of the *Caption* of the Cognizance, underneath the *Concord* as followes:

Capt & Cogn. apud C in com D 10. die. A. Anno Regni Regis Caroli secund. Anglia, Et. Coram

A. B.

C. D.

Underneath the which, the Commissioners are to Subscribe their names.

Having your *Dedimus Potestatem* thus returned, you must file your *Dedimus* and *Concord* together, and carry them to the Curfitor for the making of your Writ of Covenant, which having had and compounded, your Proceed is as in all other Writs through the severall Offices.

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Notes

NOte, That upon every Fine paid, where a Fine is paid, there is within four or five Terms a Post-Fine, that comes in charge to the Sheriff to levy in the County where the Land lieth; and that Fine is as much, and half as much, as was pay'd before in the Alienation Office.

See for this the Exposition of the Statutes of Fines in 2 *Inst.* §10. §20.

The Charge of acknowledging a Fine before the Lord Chief Justice;

For drawing the Concord,	1. s. 2.
For my Lord Chief Justices Fee for acknowledgm.	0-3-4
To his Clerk for ingrossing the Concord,	0-9-8
For the Writ of Covenant,	0-1-6
For the Return,	0-2-6
For the <i>Post diem</i> thereof,	0-3-0
For the Fine,	0-3-4
To the Receiver for marking the Writ of Covenant,	0-4-6
For the Entry and Indorsement,	0-1-6
For the Doctors Hand,	3-4
For the Warrant of Attorney and Filing it,	0-0-8
To the <i>Custos Brevium</i> ,	0-3-4
To the Clerk of the Kings Silver,	0-1-4
To the Chirographer,	0-6-4
For ingrossing the Fine,	0-3-0
For the Attorneys Fee,	0-6-4

Charges of the Fine acknowledged at the Bar.

F Or drawing the <i>Præcipe</i> and Concord,	1-4
For the Writ of Covenant,	2-6
For the Return of the same,	2-9
For the Filing thereof,	1-0
For the Serjeant at Arms,	3-4
To the Prothonotary,	0-4
To the Secondary,	0-6
To the Cryer, Tipstaves, and Court-keeper,	1-6
For the Fine,	
To the Receiver,	0-6
For Entry and Indorsement,	1-6
For the Doctors Hand,	0-4

For the Warrant of the Attorney, and Filing of it,	0-8
To the <i>Custos Bravium</i> ,	3-8
To the Clerk of the Kings Silver,	1-4
To the Chirographer,	6-8
For ingrossing the Indenture of the Fine,	3-0
For the Fee,	6-8

Charges of a Fine acknowledg'd by Dedimus Potestatem, before a Judge, and Exemplified.

FOR drawing the <i>Pracipe</i> and Concord,	3-4
To the Judge for his Fee,	9-8
To the Clerk for the return of the <i>Dedimus</i> , and ingrossing the Concord,	2-6
For the Writ of <i>Dedimus potestatem</i> ,	9-2
For all other Fees, as in the next proceeding, for the several Offices,	
For the Exemplification,	2-8
For the Exemplifying,	5-6
For the Seal thereof	2-2

Charges of a Fine by special Dedimus potestatem taken before Commissioners.

FOR drawing the <i>Pracipe</i> and Concord,	0-3-4
For the special <i>Dedimus potestatem</i> ,	1-4-0
For the Return,	0-3-0
For the rest of the Fees, they differ very little from what are upon Fines otherwise acknowledg'd.	

HAVING spoken so largely of Fines, it now rests we should speak somewhat of Recoveries that relate thereunto, for in many Cases where a Fine is to be had, if there be remainders over, it is very necessary for the Purchasers security to have a Recovery, to bar those in Remainder.

We shall therefore begin to shew you how to sue forth a Recovery, the Tenant and Voucher coming in person into Court.

When you would sue forth a Recovery to be suffered by the Parties in open Court, you must do thus:

Draw your *Pracipe* for your Writ of Entry, naming the Demandants and the Tenants, the quantity of Lands, and of what nature, how many Acres, what Mannors, Messuages, and what place or places they lye or extend.

Then take your *Præcipe* and enter it upon the Bill of Pleas or Remembrance of the Prothonotary, in whose Office you enter, and put the Voucher or Vouchers names in the margin of the Remembrance, if it be a single Voucher, then thus: *Tenen. in proprio voc. ad warr. Geo. Humston.*

If a double Voucher, *Tenen. in proprio voc. ad warr. J. L. qui voc. ad warr. Geo. Humston,* (who is the common Voucher, and the last Voucher in all Recoveries) if a treble Voucher, then you must name another person to be vouched over.

Upon this Remembrance you must enter after your *Præcipe*, the Return and *Teste* of your Writ of Entry, as it is returned, and the Sheriffs name, but this you make perfect before you examine your Recovery with the Prothonotary.

Those Remembrances are always brought to the Hall in the Term time at the first sitting of the Court; so that when you would draw your Recovery at Bar, your fittest time will be in a morning when the Judges first sit down, before they enter upon business.

Having your Clients in readiness at the Bar, the Tenants and Vouchers, and the Remembrance in your hand, call them up between the Serjeants, and then deliver the Remembrance, and shew him your *Præcipe* into one of the Serjeants hands, who will ask which is the Tenant, and cause him to stand up as also the Vouchers, to the intent that they may be shewed to the Court, then the Judges will ask, *Who knows the parties?* Which you or some other must answer, *You know them well such parties;* or else might others come either in men or womens names, and suffer a Recovery of their Lands, to the loss of their Lands, as hath been heretofore seen; where the husband brought in another woman a stranger; saying, She was his wife, and suffered a Recovery of his Wives lands to cut off her estate without her consent.

After the Tenant or Tenants with the Vouchers, have their appearance recorded, then must you give for every Serjeant that speaks, (and one there is for each person personated, whether Demandants, Tenant or Voucher or Vouchers) two shillings; which done, and the rest of the Fees paid in Court which follow after amongst others.

Then get the Curfitor to make your Writ of Entry by the *Præcipe*, and having your Writ of Entry unsealed, you must proceed therewith in the Alienation-Office, and other Offices

In all things as was shewed in a Writ of Covenant, for the Fees and the Fine are all one, onely you must have the Attorney Generals hand to the Back of your Writ of Entry, which you have not to the Writ of Covenant, for which you pay ten shillings, formerly it was but eight shillings.

Then take your Writ and get it sealed, and then open it and return it, as you do your Writ of Covenant.

Then deliver your Writ to one of the Clerks of the Prothonotaries Office, who entreteth for you, and he will enter and exemplifie your Recovery for you, and make your Writ of Seizin, and return that, and examine the Recovery with the Remembrance, Writs of Entry and Seisin, and the Roll your Recovery is entred on with the Prothonotary, who must sign your Exemplification, which being carefully examined and signed, you must get sealed, and then deliver it to your Client: And you must be very careful to see both your Writ of Entry and Seisin filed with the *Custos Brevium*, for that is the Warranty for your proceedings had.

Note, your Writ of Seisin may be made returnable *Inditatus*, or at a day certain, or of the Term following, all which your own further experience and practise will shew.

How to sue forth a Recovery by Dedimus Potestatem, and Warrant of Attorney.

If either the Tenant or Vouchers cannot come into the Court in person, you must pass it by Warrant of Attorney; which Warrant of Attorney may be taken by any of the Judges of either Bench, Barons of the Exchequer, or Serjeants at Law in their Circuits without *Dedimus potestatem*, or by Commissioners in the Countrey, where you must proceed as in the line by *Dedimus Potestatem*.

When you acknowledge your Warrant before a Judge, you must draw up your Warrant as before in Parchment, and go with the parties before a Judge, and acknowledge them, and he will under-write the Day of the Caption, and subscribe his name, then get your Writ of Entry made and passed through the Alienation-Office, which done, seal it, and deliver it to your Prothonotaries Clerk and he will enter it and will award the Writ of Summons, which will come in five Returns after the *Teste* of the Writ of Entry inclusive, and he will make a copy of the Declaration he entreteth in Parchment, which to pass with the Writ of Summons, and the Warrant of Attorney,

By the Stat. 16. Car. 2. Cap. 6. there is but five Returns.

ney, he will examine with the Prothonotary by the Writ of Entry and the Roll.

Then will he return a Writ of Entry, and give it you fixt together with the Writ of Summons, Warrant of Attorney, and Copy of the Declaration.

The Writ of Entry you must File, the Writ of Summons you must seal, and keep them so fixt together safely till the Writ of Summons be returnable: at which time you must bring the same into Court, and deliver it to one of the Serjeants, who will call it at the Bar, as the manner is, and you must pay the Fees in Court; which done, you must take it from the Serjeant and give it to the Prothonotary, who will mark it thus, (*Ad Barram*) and give it you again. which you must deliver to your Clerk in the Prothonotaries Office, who will exemplifie and make your Recovery perfect and fitted for the Seal,

Note. That although the Tenant by Warrant of Attorney, if either the Recovery be a single Voucher, or the Vouchers come in person, it needeth no Summons, and so may be a perfect Recovery of one Term.

Note also. Where you will take your Warrant by *Dedimus possessionem* before special * Commissioners, you must carry a Note of your *Præcipe*, and of your Commissioners Names to the Curfitor, and get him to make your *Dedimus*, and proceed in that as is shewed you in case of a Fine, as to the Caption: and when your Warrants are acknowledged, get them certified, and then by the help of your Prothonotaries Clerk, you may soon proceed to perfect your Recovery, either to Summons or *Alias* Summons, or so as your Cause shall require.

It becometh the Attorney to be very careful of the true returning and filing of his Writs, and the examining and filing of his Warrants, and other proceedings, for fear of committing error: and to that purpose, by the Stat. of 23 *Eliz* it hath been used, especially in weighty matters, to exemplifie the Writs, Returns, and Warrant of Attorney, for fear of being imbezled, whereby the Recoveries might be overthrown.

If you are to search for any Recovery of an old Term, you must search in the Office of the Clerk of the Warrants of Attorney, where you shall soonest find it of any place, by reason all the Prothonotaries bring in their Plea-Rolls, in which the Recoveries are entred to the Clerk of the Warrants to take them out into a Book,

Charys

* There must be a transcript of the Warrant of Attorney, and a *Mittimus* unto the Common-Pleas, where it is taken by course in the County.

*Charges of a Recovery with two Vouchers in Person
at the Barr.*

	<i>s. d.</i>
F OR drawing your <i>Præcipe</i> ,	2-6
For taking it into the Remembrance,	1-0
For your Writ of Entry,	2-6
For the Fine of it.	
To the Receiver.	
For the Doctors hand, entring, and indorsing,	1-6
For drawing it at Bar, and four Serjeants,	13-4
To the Cryers,	1-0
To the Box,	1-0
To the Warden of the Fleet,	0-6
For the common Vouchee,	0-4
For the Attorney-General's Hand to the Writ,	10-6
For making the Remembrance when the Recovery is drawn at the Bar,	2-0
For the Return of the Writ of Entry,	3-0
For the <i>Post diem</i> of the Writ of Entry,	0-4
For the Return of the Writ of Seisin,	2-0
For the Prothonotary for the Entry of the Recovery,	14-6
To the Clerk for exemplifying of it, and making the Writ of Seisin,	7-6
For Sealing the Exemplification and Writ of Seisin,	2-9
For filing the Writs of Entry and Seisin,	2-0
For the Fee of Demandant, Tenant, and Vouchee in the Recovery,	10-0

*Charges of a Recovery by Summons upon a Warrant
of Attorney.*

	<i>s. d.</i>
F OR drawing your Recovery, <i>Præcipe</i> , } and the Warrant of Attorney, }	3-4
For entry of the Summons.	6-6
For making the Writ of Summons, and the Seal	2-7
To the Clerk for drawing the Summons, and the Entry in Parchment,	2-6
For filing every Warrant of Attorney,	0-8
For Return of the Writ of Summons,	2-3
For the filling of it.	1-0

Note,

Note, That every single Voucher hath three Serjeants, a double Voucher four Serjeants, and a treble Voucher each five Serjeants, and so further.

The Prothonotary hath as you see before for	3	1.
his entry for every Summons,	3	6-6
For every single Voucher,		10-6
For every double Voucher,		14-6
For a treble Voucher,		18-6
For every <i>Dedimus</i> and <i>Mittimus</i> ,		4-0

The Charge of a Recovery under the Great Seal of England.

FOR the <i>Certiorari</i> ,	1. s. d.
For the allowance thereof,	0-13-4
For the Exemplification for every Skin,	1-09-6
For the Seal.	1-04-8
	1-08-6

Come we now to the Action called Ejectione Firmæ.

* If your entry be toll you must bring the real action.

THis Action is the most general Action now in use, for triall of a Title, and comes in place of many real actions which were both very tedious, difficult, and chargeable. This lyes where a man makes a Lease to another of Lands, Houses, &c. And seals and delivers it upon the Premises, and leaves the Lessee in possession, and afterwards the Lessee is outed by the Entry of a stranger; here, in this case the Lessee shall bring his *Ejectione Firmæ*.

And in bringing this action, he must have recourse to his Lease, both for the thing demised, and the Term, and the date of the Demise, and the place precisely where the Land lyes, but those only are to be mentioned in the Connt; but not in the Writ.

You must be sure your Original bear Teste, after the entry of the Ejector, and after.

In this action is recovered the possession of the Land or House demised, and that by an Execution of *Habeas Facias possessionem*, which is awarded upon the Judgment Roll, and also damages.

The Process in it are Original *Capias alias*, &c.

The Original runs thus :

R E X

REX &c. Vic. Midd. salutem, Præcipimus tibi quod attach. C. D. nuper de London. Geni. Ita quod sit coram Justic. nostris apud Westm. ad respondend. W. J. de placito quare vi & armis unum Messuagium, unum Gardinum, decem acras terræ, tres acras prati, & tres acras pasturæ cum pertin. in D. in Com. tuo quod S. W. vid. eidem W. dimisit ad terminum qui nondum præterijt intravit. Et ipsum a firma sua eiecit Et alia enorma ei intulit ad grave dampnum ipsius W. & contra pacem Dom. Regis nunc &c. T. &c.

This is the Form of your Original, and must be made by the Cursitor of the Shire where the Land lyeth.

Note, That although in your Lease you many times name several Closes, either of Land, Meadow, or Pasture, by their particular names, yet in your Writ you must name the quantity of Acres of each, and how many Houses, Mills, &c. Note, an Ejectment will not lye of a Cottage.

After your Original is sued out, and a *Nichil* returned thereupon, you proceed to take out a *Capias*, and so arrest the Ejector; but if you cannot arrest upon the *Capias*, you may, as in other Actions, proceed to the Outlawry.

But this way of sealing of Leases of Ejectment, and the proceedings afore-mentioned are now out of use; and now the course is to draw a Declaration against an Ejector nominated by your self, and to leave a Copy of the said Declaration, with the Occupier of the House or Land, with this or the like Indorsement,

John. B. You may perceive, that I am sued for the Messuage and Lands within mentioned being in your possession: These are therefore to desire you to defend your Title, or else shall suffer Judgment to be entred by Default.

Or thus: Unless the Tenant in possession, or they under whom he claims, do this present *Trinity* Term appear to this Declaration, and make him or themselves Defendants thereunto, and by Rule of Court confess the Lease, Entry, and Ejectment, and insist onely upon the Title, the Defendant in this Declaration will confess Judgment, and possession will be delivered accordingly to the Plaintiff.

To A. B. Tenant in possession of the Premises within mentioned.

The

The Declaration goeth thus :

Michaelis xvi. Caroli Secundi.

Robinson.

M*iddlesex* C. H. Nuper de London Gen. Attachiat fuit ad respondend. W. J. de placito quare vi & armis unum Messuagium, unum Gardinum, decem acras terræ, tres acras prati & quatuor acras pasturæ in H. in Com. præd. quod S. W. vid. eidem Will. dimisit ad termin. qui nondum præterit intravit & ipsum a firma sua præd. ejecit ac alia enormia ei intulit. Ad grave damnum ipsius Will. Et contra pacem Dom. Regis nunc, &c. Et unde idem W. per J. H. Attornat. suum queritur quod cum præd. S. primo die Octobris, Anno Regni Dom. Regis nunc quinto decimo apud H. præd. in Com. præd. dimisisset præfato W. Tenementa præd. cum pertin. Habend. eidem W. & assign. suis a seho Sanct. Mich. Arch. tunc ultimo præterito usque finem & terminum Trium Annorum extunc prox. sequen. & plenar. complend. & finiend. v. rture cujus quidem dimissionis idem W. in Tenementa præd. cum pertin. intravit & fuit inde possessionat. Et sic inde possessionat. existen. præd. C. postea scilicet eodem primo die Octobris Anno Regni Dicti. Dom. Regis quinto decimo supradicto in Tenementa præd. cum pertin. quod eadem Sara præfat. W. in forma præd. demisit ad terminum præd. qui nondum præterit intravit. Et ipsum a firma sua prædicta ejecit ac alia enormia, &c. Ad grave damnum, &c. Et contra pactum, &c. unde dicit quod deteriorat. est & damnum habet ad valenc. decem librorum. Et inde producit sextam, &c.

Et præd. C. per G. A. Attornat. suum venit & defend. vim & injur. quando, &c. Dilatio usque Octab. Hill.

After this Declaration is delivered, the person whose Interest is concerned, ought to retain an Attorney, who is to give his Clients Name to the Plaintiffs Attorney, that so he may be made Defendant in stead of the Casual Ejector. And then a Rule is to be entred by consent as follows.

Robinson

Robinson Pasch. 15. Caroli Secundi Regis.

D. versus M. in ejectione Ordinat. est per Cur. ex assensu
firmæ de terris & Tene- J. H. Attorn. quer. & I. R. At-
mentis in W. in Com. E. tornat. pro T. W. nuper de W.
ex dimissione E. P. in Com. E. præd. Yeom. quod
idem Tho. admittatur defend. qui indilate comparebit per
Attorn. suum præd. & recipiet narrationem ac placitabit ad
inde generalem exitum Hoc Termino : & ad triationem super
inde habend. idem T. comparebit in propria persona sua aut
per ejus Consilium vel Attornat. Et cognoscat dimissionem,
narrationem & actualem expulsionem, vel quod in defectu
inde intretur Judicium versus defend. G. M. casualem erecto-
rem. Sed parcatur ulterior prosecutio versus eum quous-
que præd. Tho. in aliquo premissorum default fecit. Et
ex consilii assensu ulterius ordinatum est per Cur. quod præd.
T. nullum capiet advantagium versus quer. pro ejus non pro-
secutione super triatione occasionat. per hujusmodi default.
Sed quod prædictus Tho. solvet quer. castag. per Prothono-
tar. proinde taxand. Et ulterius ordinat. est quod dimissor
quer. sit onerabilis cum solutione castagiorum defenden. per
Cur. habit aliquo modo taxand. vel adjudicand.

Then the Defendants Attorney may put in his Clients
Plea, as followeth :

ET præd. R. per A. C. Attornatum suum venit & defen-
dit vim & injur. quando, &c. Et quoad venire vi & armis
actionem totam transgres. & ejectionem præd. superius fieri
supposit. præter transgr. & ejectionem in tribus acris terræ
prædictorum tenementorum præd. cum pertin. in C. præd.
dicit quod ipse in nullo est inde culpabilis prout præd. S. su-
perius versus eum queritur. Et de hoc. pon. se super patriam
in præd. T. similiter, & quoad transgr. & ejectionem præd.
in præd. tribus acris terræ præd. tenementorum cum pertin.
superius fieri supposit. Idem R. dicit quod ipse non est in-
formatus per præd. R. magistrum suum de aliqua responsione
pro ipso R. præd. T. dand. per quod. præd. R. reman. ver-
um ipsum T. inde indefens. per quod ipse præd. T. terminum.
suum præd. de & in præd. tribus acris terræ cum pertin. ac
damno

dampna sua occasione transgres. & ejectionis præd. in præd. tribus acris terræ recuperare debet, sed quia, &c.

Here you have an Issue joyned, which if you intend to try, you must proceed as is directed you in other Actions, and so consequently for your Judgment after Verdict.

In this Action, as I told you, there is possession recovered as well as damages, and for Execution in both, which is for possession, your *Habere facias possessionem*, which is made you most usually by the Clark of the Judgments; after your Costs are taxed, and the Judgment signed; and likewise a *Capias ad satisfaciendum* against the Body for the Damages, or a *Fieri Facias* against the Goods or Lands; which are also made by the Clark of the Judgments, and may likewise be made by any of the Prothonotaries Clarks.

Having your Writ of *Habere facias possessionem* in case you cannot voluntarily have quiet and peaceable possession, you must deliver your Writ to the Under-Sheriff, who will put you into possession, and remove whomsoever are in.

The Fees incident to this Action, follow in a Table amongst others.

* *Replegiaro* is compounded of *Re* and *Pleg*. which is as much as to say, to deliver upon Pledge, Co. Lit. 145. b.

Replevin and Avowry comes in the next place to * be handled, as that which brings a Title many times in question, by reason of the Avowry: Wherein we shall shew you the nature of the Action, and in what Cases it lies, and for what things, what is incident to it by way of proceeding. And to give you the fuller knowledge of this Action, we will begin to treat briefly of Distresses in general.

Distress is a thing which is distrained in a House, or upon any Land for Rent behind, or other Duty or Services; or for hurt done, although the property of the thing belongeth unto

* They are a stranger: But if they be Cattel that belong to a stranger, it is requisite that they were * *levant and couchant* upon the same ground; that is to say, That the Beasts have been upon the ground, although they have not been *levant and couchant*, but not for Damage Feasant.

on the ground a certain space, and have well rested themselves there, or else they are not distrainable for Rent or Service.

And if a man distrain for Rent-Services, or other thing, without a lawfull cause, then the party grieved shall have a Replevin, and upon * Security found to pursue his Action, shall * See for have the Distress delivered to him again : But there be di-^{this} 2 Inst. vers things that be not distrainable, viz. another mans Gar-^{upon} 2 cap. ment in the house of a Taylor, a strangers Cloath in the house of W. 2. t of a Fuller, Shearman, or Weaver, for that they be com-† Co Lit. mon Artificers, and that the common presumption is, that 47. such things belong not to the Artificers, * in their own right, * Co. Lit. but to other persons which put them there to be wrought: The 47. Lessor † cannot distrain Fats fixt by the Lessee, or a Dying † Co. Lit. Pan, although the Lessee may remove them during his Term, 47.

10 H. 7. 21.

* The Lessor cannot distrain Glafs fixt by the Lessee for * Co. Lit. his Rent, 21 H. 7. 26. 47.

The Lord cannot distrain Shocks of Corn for his Rent, but doing Damage he may, Sheaves of Corn in a Cart may be distrained, Victuals is not distrainable, 21 H. 7. 41.

A Distress ought always to be made of such things, whereof the Sheriff may make Replevin, and deliver again in as good case, as they were at the time of the taking.

A man may distrain for homage of his Tenant, for Fealty and Escuage, and other Services.

He may distrain also for Fines and Amerciaments, which be assessed in a Court-Leet; but not in a Court-Baron, unless by Prescription.

He may likewise distrain for Damage-Fesant, that is to say, when he findeth the Beasts or Goods of any other doing him wrong, by eating his Grass or Corn, or trampling them down, or for incumbring his Ground.

Note, A man may not distrain for any Rent or thing due for any Land, but upon the same Land that is charged therewith.

But in case, when a man comes to distrain, the other seeing his purpose, chaseth his Beasts or Cattel away, † or beareth † Alit. If his Goods out, to the intent they shall not be taken for a Di-^{the Lord} the Lord had not view of the Cattel within his Fee, albeit the Tenant drive them out on purpose, Co. Lit. 161.

stress,

stress upon the Ground, in such a Case I may well pursue; and if I take it presently in the High-way, or in another mans ground, the taking is lawful as well there as upon the Land charged, to whomsoever the property of the Goods be.

And for Fines and Amerciaments, which he assesse in a Leet, one may take the Goods of him that is so amerced, within whose ground soever they be, within the Jurisdiction of the Court, *Avowry 162.*

Where one is amerced in a Leet, and another takes Leather from him, and makes thereof Boots and Shoes, whereby there seems to be an altering of the property, in this case those Boots and Shoes being within the Precinct of the Leet, may be distrained for the Amerciament.

Note, when one hath taken a Distress, it behoveth him to bring it to the common Pound, or else he may keep it in an open place, provided that he give notice to the Party who was owner of it, of his so taking of it, and the place where it is, that he, if the Distress be a quick Beast, may give it Food; and then if the Beast or Beasts die for default of Food, he that was distrained will receive the loss; for the Party distraining make take another Distress for the same Rent or Duty. Note further, At the Common-Law a Man might have driven a Distress whither he would, this is restrained by the Statute of *Marlebridge*, cap. 4. and by Statute 2. *Phil. and Mary.*

* Note, if the Tenancy be in one County, and the Manner in another, the Lord may drive the Distress to the Manner, 2 Inst. 186.

But if he carry the Distress to a Hold, or out of the County, so that the Sheriff may not make deliverance upon the Replevin, then the Party, upon the Sheriffs Return of the Replevin, may have a Writ of *Withernam* directed to the Sheriff, that he take as many of his Beasts, or as much Goods of the other in his keeping, till he hath made deliverance of the first Distress. And also if the Beasts or Goods be conveyed to a Fort or Castle, the Sheriff may take with him the *Posse Comitatus*, that is, the Power of the County to beat down the Castle, as appears by the Statute of *Westminster 1. Chap. 17.*

There is a Distress finite and infinite.

Distress finite is limited by Law, how often it shall be made to bring the Party to a Trial of the Action at once or twice.

Distress infinite is without limitation, until the Party come against a Jury that refuseth to appear upon Certificate of

Assize;

Assize, the Processes are a *Venire factas*, *Habeas corpora*, and distress infinite.

It is divided also into Grand Distress, and an Ordinary Distress.

A Grand * Distress is that which is made of all the Goods and Chattels which the Party hath within the County, and seemeth sometimes to be all one with Distress infinite.

* The Grand Distress is the Distress after appearance, in lieu of a Petit Cape.

If a man proffer sufficient amends before the Distress made, for the wrong done by a mans Cartel, or otherwise, he cannot distrain and avow.

Note, That it is not lawful for any common person to make Distresses out of their Fee, nor in the Kings High-way, nor in the common Street; but the King might, and so might any that were substituted as his Ministers, and have special authority derived from him, *Per Stat. Marsh. cap. 15.*

But if the Lord distrain in the High-way, the Tenant cannot avoid it in avowry, for then the King should lose his Fine, but the Tenant shall have an Action; therefore upon the Stat. of *Northbridge, cap. 15. vid. 2 Inst 131.* and the Statute is not intended of Distress for Rent-charge, or by reason of a Leet.

Thus much for Distresses in general, we come now to the carrying of the Distress taken.

This Replevin (as we touched before in Distress) is a Writ that lyeth where any man distraineth another for Rent, or other thing, then the Party distrained shall have this Writ to the Sheriff, to deliver to him the Distress and shall find Surety (as we said before) to pursue this Action; and if he pursue it not, or if it be found or adjudged against him, then he that took the Distress shall have again the Distress, and that is called the Return of the Beasts, or other things, and he shall have in such cases a Writ that is called a *Retorno Habendo*.

Replevins are of two sorts, by the Common Law, and that is by Writ, by Statute, and that is by plaint, *Co. Lit. 145 b.*

Also, if it be in any Franchise or Bayliwick, the party shall have a Replevin of the Sheriff, directed to the Bayliff of the same Franchise, for to deliver them again, and he shall find Surety to pursue his Action at the next County-Court; and this Replevin may be removed out of the Country into the Common-Pleas, by a Writ of *Recordare*.

* See for
this more
particular-
ly, F. N.
B. 66.

Note, That a man may have a Writ of * *Hæmine replegiari* do, which lyes where a man is in Prison, and not by the special Commandment of the King, nor of his Justices, nor for the death of a man, nor for the Kings Forreitt, nor for such cause that is not repleviable, then he shall have this Writ directed to the Sheriff, that he cause him to be replevied.

This Writ is a *Justities*, and not returnable; and if the Sheriff do it not, then there shall go out another Writ (*Sicut alias*) and afterwards another Writ, (*Sicut plures vel causam ubi significet*) which shall be returnable; and if the Sheriff yet make no Replevin, then there shall go forth an Attachment against the Sheriff directed to the Coroners to Attach the Sheriff, and to bring him before the Justices at a certain day, and furthermore, that they make Execution of the first Writ.

If a man take living Cattel, and more then one Beast, then the Writ of Replevin runs thus.

The Writ of Replevin.

CAROLUS Secundus, &c. Præcipimus tibi quod iuste & sine dilatione replegiari facias A. B. Avera sua videl.

Quæ C. D. cepit & injuste detinet; ut dicit & postea cum inde iuste deduci facias ne amplius inde clamorem audiamus pro defectu Justitiæ, &c.

If it be but one single Beast that is taken, then the Writ shall be.

CAROLUS Secundus, &c. Præ tibi quod Replegiari facias A. B. quendam Equum suum, vel, Jumentum quoddam suum, quendam bovem suum vel quoddam Examen Apium suorum quem &c. quod, &c.

If it be of any dead Cattel, the Writ shall go thus.

CAROLUS Secundus, &c. Præ tibi quod Replegiari facias C. D. quoddam Rete suum vel quoddam ferrum de Molindin, suo.

In his Declaration it behoveth him, to declare of divers things naming them.

But if he take but one thing that is a dead Cattel, then the Writ shall be thus.

REX, &c. *Quod Replegiari facias A. B. bona & Cattle sua, &c.*

Note, That if the Sheriff return upon the Replevin; the *Alias* or *Plures*, (where the Replevin is to be made within a Liberty or Franchise) that he hath commanded the Bailiff of the Franchise, who hath given him no Answer, or that the Bailiff will not make Deliverance, that then the Plaintiff shall have a *Non omittas* to the Sheriff, commanding him to enter into the Franchise, and make the Return; and if the Sheriff do it not, the Plaintiff shall have an *Alias non omittas*, directed to the Sheriff; and afterwards a *Plures non omittas*, &c.

But this Return, *Quod mandavi Balivo libertatis de W. &c. mi nullum dedit mihi responsum, &c.* Or the other Return, that the Bayliff will make no Deliverance, are no good Returns: For by the Statute of *Marlebridge, Cap. 21.* in the end of the same Statute appears that the Sheriff, upon such a Return made to him by the Bayliff, ought presently to enter into the Franchise or Liberty, make the Deliverance of the thing taken, *1 Inst. 193.*

*Vid. 1.
cap. 17.*

At the Common-Law, in such a case, the Sheriff would not enter into the Liberty, *F. N. B. 58.*

By the Statute of *Marlebridge, cap. 21.* the Sheriff may either by Paroll or Precept; command his Bayliff to deliver them, and may hold Plea; and albeit he be not worth 20 l. *1 Inst. 136.*

By the Custome of the County of *Northampton*, in the absence of the Sheriff, the Frank-Pledge may make Deliverance.

And if the Sheriff, upon the *Plures*, Return, that the aforesaid *B.* the Cattel of the aforesaid *A.* hath taken, and hath driven out of the County into the County of *F.* by which he cannot replevy them unto him; or if the Sheriff return, that he hath commanded the Bayliff of the Franchise who hath Return of Writs, &c. Who hath answered him

him, That the Cattel are elloynd into divers Liberties, that he cannot have the view of them whereby to make deliverance.

And if the Sheriff make Return, that he cannot have view of the Cattel, whereby to make Deliverance; or if the Sheriff return, that after the taking of them, &c. the Defendant hath elloynd his Beasts out of his Bayliwick, by which he cannot make deliverance; or if the Sheriff return, that the Defendant hath elloynd his Beasts into places unknown, by which he cannot come to have a view of the Beasts whereby to make Deliverance; or if the Sheriff return, that he hath commanded the Bayliff of the Franchise, &c. Who hath answered him, that the Defendant hath impounded the Beasts within the Rectory of the Church of C. by which he cannot make deliverance, upon those Returns made by the Sheriff, the Plaintiff may have a Writ of *Wisbernham*, to take as many of the Beasts of the Defendant; and it shall be directed to the Sheriff, and the Writ shall be thus.

The Writ of Wisbernham.

REX Vic. salutem, Cum pluries tibi præcipimus quod juste & sine dilatione Replegiari faceres Averia sua videl.

Quæ B. C. cepit & injuste detinuit (ut dicitur) vel causam nobis significares quare mandatum nostrum alias inde tibi directum exequi noluisti vel non potuisti, ac tu nobis significaveris, quod postquam prædict. Averia prædicti A. cepit in Com. tuo, ea fugavit in Comitatu præd. in Comitatum L. per P. quod ea eidem A. Replegiari non potuisti: Nos malitias ipsius B. obviare volentes in hac parte. Tibi Præcipimus, quod Averia prædict. B. in Balliva tua invent. sine dilatione capias in *Wisbernham*. Et ea detineas donec eidem A. Averia sua prædict. secundum legem & consuetudinem Regni nostri Angliæ Replegiari possis juxta tenorem mandatorum nostrorum prius tibi inde directorum T. &c.

Vide le Register.

Not. That the Sheriff commanded the Bayliff of the Franchise to take as many of the Beasts of the Defendant as he could find, &c. Who hath answered him, that he cannot have a view of the Beasts whereby to make Deliverance.

Note, In this Writ of *Withernam*, that whosoever the Sheriff return upon the *Plures*, it ought to be inferred and rehearsed in the Writ of *Withernam*, as is before specified, and if the Sheriff return upon the *Plures*, that he hath commanded the Bailiff of the Franchise, &c. who answereth him, that the Cattel are elloyned, &c. then the Plaintiff shall have a Writ of *Withernam*, directed to the Sheriff, and the Sheriff shall command the Bayliff of the Franchise to serve the *Withernam*, and if the Bayliff do not Execution, or give not any answer to the Sheriff of the precept directed to him, then the Plaintiff shall have a *Withernam* directed to the Sheriff, with a (*Non omittas propter aliquam libertatem, &c. Quin eam ingrediaris, &c.*) and shall take in *Withernam*, &c.

Note that the Sheriff upon complaint made to him of the taking of Cattel, may command his Bayliff by word of mouth to make Replevin, and this as well as if the Sheriff had made a precept to his Bayliff to make a Replevin, for it may so fall out, the Sheriff nor his Bayliff may not be able to write, or may want pen, ink or paper. *Marlb. vi. Inst. 139.*

If a man take Cattel damage feasant, that is, doing hurt, and offer sufficient amends before the Cattel be impounded, and the party refuseth it, &c. Now if he sue a Replevin of the Cattel, he shall recover damages only for the detaining of them, but not for the taking of them, for that was warrantable. *Co. Lib. 8. 147. 2 Inst. 107.* If the Lord or Bayliff run to distress the beast of his tenant for his rent behind, before the distress, the tenant may upon the said lands, levy the arrears, and if after that a distress be taken, it is wrongful, and if the Lord have distrained, if the tenant before the impounding of them levy the arrears, the Lord ought to deliver the distress, and if he doth not, the detainer is unlawfull.

So in case of a distress for damage feasant, the tender of amends before the distress, makes the distress unlawful, and after the distress, and before the impounding the Detainer unlawful.

But if a man bring an action of trespass for taking away his beasts, there tender of sufficient amends was no barr before the action brought, until the Statute of 21 Jac.

And if the Lord take the beasts of his tenant wrongfully, and after the beasts return unto the tenant, yet the tenant shall have a Replevin against the Lord for those beasts, and shall recover

cover his damages for the wrongful taking of them.

And if a man distrain in one County, and drive the Cattel into another County, the party whose Cattel they were may sue a Replevin in either of the Counties, which he please, or in both.

And if the Cattel of a Feme-sole, that is, a woman unmarried be taken, and after wards she take a husband, the husband solely may sue a Replevin.

Note in Replevin, if the Plaintiff declare that the Defendant now hath and detaineth the Cattel, &c. and the Defendant appears, and after makes default, the Plaintiff shall have judgement to recover all in damages, as well the value of the Cattel, as damage for the taking of them, and his costs.

In this action of Replevin, the process are ; Summons Attachment and distress, and upon a *Nichel*, process of outlawry, and then the Original must come forth of the Chancery, (except the Sheriff who may make a Replevin, *Ex officio*, which shall be tryed in the Sheriffs Court, called the County Court) do make it which is most usual, and then it may be removed forth of the Sheriffs Court by a (*Recordare*) or forth of any Lords Court or Hundred Court, by an (*Accedas ad Curiam*) upon either of which Writs returnable, either into the Kings Bench or Common Pleas, if the Plaintiff declare not against the Avowant for taking his Goods or Chattels which were taken before, the Avowant is to sue out a Writ of *Returno Habendo*, to be made by the Philizer of the County.

And if the Sheriff upon the *Returno Habendo*, do return that the Cattel were elloyned, &c. then a *Capias* in *Witernam* as was before said, shall be awarded to take other Cattel, and if the Sheriff return that he hath no Cattel, then a *Capias* against the Body, and those Processess are likewise made by the Philizer of the County, &c. And the like Process may be had in a Court Baron, in Replevin there.

Having shewed you the nature of this Action, and how and in what cases it lyes, and the Processess that are incident to it, we come now to the Declaration upon it.

Drum

Deon ff.

IN. Sumon fuit ad respondend. *W. D.* De placito quare cepit averia ipsius *W.* & ea injuste detinet contra vad. & pleg. &c. Et unde idem *W.* per *J. H.* Attornat. suum queritur Quod. *præd. J. N.* 10 Die Maij Anno Regni Dom. Regis nunc decimo quinto apud dale in quodam loco ibidem voc. *R.* cepit averia videl. quinque juvenas & duos juvencos ipsius *W.* & illa injuste detinuit contra vad. & pleg quousq; &c. unde dicit quod deterior est & damnum habet ad valenciam decem librarum, & inde producit sextam, &c.

The Avowry for Damage feasant.

ET. *præd. J.* per *A. B.* Attornat. suum ven. & defend. vim & injur. quando &c. Ac ut Ballivus *J. F.* bene cogn. captionem averiorum *præd.* in *præd.* loco in quo, &c. Et iuste &c. Quia dicit quod locus in quo supponitur captio averior *præd.* fieri continet & *præd.* tempore captionis averior *præd.* fieri supponit. continebat in se sexdecim acras terre cum pertin. in *N. præd.* Quæ quidem sex decem acras terre cum pertin. sunt & *præd.* tempore captionis *præd.* superius fieri supponitur fuerunt solum & liberum tenement. ipsius *W.* Et quia averia *præd. præd.* tempore quo &c. fuer. in *præd.* loco de quo &c. herbam ibidem crescen. depascend. Et damnum ibidem faciend. Idem *J. N.* ut Ballivus *præd. J. E.* bene cogn. captionem. Averior *præd.* in *præd.* loco in quo. Et iuste &c. damnum ibidem faciend. &c.

A Plea in Barr to the Avowry, by a Guardian in Socage.

ET. *prædict. W.* dicit quod *præd. J.* ratione præ allegata ut Ballivus *præd. J. E.* captionem averiorem prædictorum in prædicto loco in quo &c. iuste cogn. non debet, quia dicit quod ante tempus captionis prædict. & diu ante prædict. *J. E.* aliquid habuit in *præd.* Sexdecim acr. terre cum pertin. quidam *R. E.* seifitus fuit de Manerio de *H.* *præd.* cum pertin. in Com. *præd.* unde *præd.* locus in quo &c. fuit parcell. in Dominico suo ut de feodo. Et sic inde seifitus existens *præd.* Maner. cum pertin. unde &c. tenuit ex dono cuiusdam *R. W.* Mil ut de Manerio suo de *L.* in com. *præd.* in Socagio scil. per fidelitatem et Annual. Redditum Viginti librarum quolibet Anno ad festum Sancti Michaelis Archangeli Annuatim solvend.

solvend. Necnon per servic. faciend. festam ad Curiam Domini R. quod Manerii sui de L. a tribus in tres septimanas ad Manerium præd. Annuatim tenend.

Et præd. R. E. de Maner. de H. præd. cum pertin. unde, &c. sic seisit. existen. obiit inde seisit. Post cujus mortem præd. Maner. cum pertin. unde, &c. descendebat præd. J. E. ut filiz & hæred. præd. R. E. præd. J. E. ad tunc existen infra ætatem quattuordecim Annorum scil. de ætate duodecim Annorum & præd. W. ut proxim. consanguin. præd. J. E. scil. frater Elianor ux. præd. R. E. & mater præd. J. E. cui præd. Maner. de H. cum pertin. unde, &c. à præd. J. E. jure hæreditario descendere non posset, per quod custodia dicti Manerii de H. cum pertin. unde, &c. & de præd. J. E. possessionat fuit eo quod ad idem tempus in quo, &c. præd. J. E. fuit infra ætatem quattuordec. Annor. Et sic inde possessional. existen postea & ante præd. tempus captionis, &c. posuit Averia sua præd. in præd. locum in quo, &c. herbam ibid. tunc crescen. de pascen. Ac averia illa fuerunt in præd. loco in quo, &c. herbam ibid. tunc crescen. de pascen. quonq; J. præd. die M.

Anno xii. supradict. apud R. præd. cepit eadem Averia ipsius W. & ea injuste detinuit contra vad. & plegia quousque, &c. prout idem W. superius versus eum queritur. Et hoc paratus est verificare unde ex quo præd. J. captionem Averiorum præd. in præd. loco in quo, &c. Superius cogn. Idem W. petit Judicium & dampna sua occasione captionis & injuste detentionis Averiorum illorum sibi ad adjudicari.

Et prædict. J. N. ut prius dicit. Quod præd. sexdecim ac. tres cum pert. n. sunt & præd. tempore captionis præd. superius fieri supposit fuer. solum & liberum tenementum præd. J. E. ut superius allegavit, Absq; hoc quod prædict. W. Mil. tenebat præd. Maner. de H. cum pertin. unde, &c. de præd. R. W. Mil. ut de Maner. suo de L. in Socagio scil. per fidelitatem & Annualet reddit. Viginti librarum per annum in quolibet Anno ad festum Sanct. Mich. Archang. Annuatim solvend. & per servicium faciendi fest. ad Cur. præd. R. W. Manerii sui de L. de tribus in tres septimanas tenend. prout præd. W. superius allegavit. Et hoc paratus est verificare unde petit Judicium & retorn. Averiorum suorum una cum dampnis eidem J. N. adjudicari, &c.

Et præd. W. ut prius dicit. Quod præd. R. E. tenebat præd. Maner. de H. cum pertin. unde, &c. de præd. R. W.

ut de Manerio suo de L. scil per fidelitatem & reddit viginti
librarum per annum in quolibet Anno ad festum Sancti Mi-
chaelis Archang. Annuatim solvend. necnon per servic. faci-
endo sectam ad Cur. præd. R. W. Mauerii sui præd. de tri-
bus in tres septimanas ad Manerium præd. tenend. prout su-
perius alegavit ex petit quod inquiretur per patriam & præd.
J. N. similiter Id præceptum est Vic. quod Ven. fac duode-
cim, &c. Ad Recogn. &c. quia tam, &c.

Here you have both a Declaration, an Avowry, a bar to
the Avowry, a Rejoynder, and Sur-rejoynder, whereby you
have a full and compleat Issue made up.

And here note, That this Avowry is for Damage Feasant ;
but there are several other Avowries ; as,

First, a Man may avow for services due to his Mannor, as
suit to his Court, or suit at the Mill, &c.

Or for a Rent-charge upon Prescription to distrain,

Or for a Rent-charge generally he may avow.

A man may avow for an Amerciament in a Court-Baron.

After issue joyned, in case you would proceed to a Trial,
your proceeds are for the making your *Venire*, and suing out
your Record, and *Habeas Corpora*, as in other Actions.

Partition.

THis Action lyes in several Cases, as where Lands descend *Co. Lit.*

by the course of the Common-Law, or by Custom, as 163.

Gavelkind Land amongst Coheirs or Copartners, where
there must be two at least, whether they be Sons, Daughters,
Sisters, Aunts, or otherwise of Kin to the Ancestor from
whom the Land descended to them.

And this Partition is made four ways for the most part, *Vid. Avow-*
whereof three are at pleasure, and by agreement amongst *ry, Co. Lit.*
themselves, the other when any refuse. 180.

One Partition is, where they themselves divide the Land *Co. Lit.*
equally by agreement, into so many parts as there be of them 105. b.
Copartners, and each chuseth one share or part, the eldest
first, and so the one after the other as they be of age, except
the eldest by consent made the Partition, then the choice be- *Co. Lit.*
longest to the next, and so to the eldest last, according to the 166. b.
old Rule, *He that divides must not chuse.*

Another

Co. Lit.
166. a.

Another partition is, when they chuse certain of their Friends to make division for them.

Co. Lit.
166. b.

The third partition by agreement, is by drawing of lots thus: First to divide the Land into so many parts as there be Copartners, then to write every part severally in a little Scroll, or piece of Paper, or Parchment, and put the same Scroll up close into a Hat or Cap, or other such like thing, and then each Partner, one after the other as they be of age, to draw out thereof one piece or Scroll, whereon is written a part of the Land, which by this drawing is now severally allotted unto them in Fee-simple.

Co. Lit.
167. a.

The fourth partition, which, as we said, is by compulsion, comes now to be treated of, which is, where one or some of the Copartners would have partition, and other some will not agree thereunto, then they that so would have partition, may bring a Writ *De Partitione facienda*, against the others that would not make partition, by vertue whereof they shall be compell'd to part, &c. Tenant *per Curtesie* may be compelled, but cannot compell to make partition by Common-Law. *Alit. per Stat. Co. Lit. 175.*

Copartners and Estranger purchase the part of one of them, he and one other Copartner cannot joyn in a Writ of Partition, neither by the Common-Law, nor by the Statute, but severally they may, *Co. Lit. 175.*

In Rent where the Lands are of nature of Gavelkind, they call at this day their partition, shifting, which is the same with that the Saxons used, namely *Shafson*, which signifies to make between Coheirs Partition, and to assign to each of them their portion, in *Latine* it is called *Horriſcere*.

Partition may also be made by Joynt-Tenants, or Tenants in common by their assent by Deed between them, or by Writ, by the Statute of 3 Henry 8. *cap. 31.* and by the Statute of 31 H. 8. *cap. 10.* by custom of some Burrough, Tenants in common, and Joynt-Tenants may make Partition by compulsion by custom. *Co. Lit. 187.*

The Process in this Action is Summons, Attachment, and Distress infinite.

Your Summons is as follows:

The Summons in Partition.

CAROLUS &c. Si A. B. &c. tunc summ. C. D. &c. quod sit, &c. ostensurus quare cum iudem A. & C. in simul & pro indiviso teneant. Tres acras terræ cum pertinentiis de hæreditate quæ fuit A. M. matris prædictorum A. & C. cuius hæredes ipsi sunt in J. idem C. partitioni inde inter eos secundum legem & consuetudinem regni nostri Angliæ faciendi contradicit & eam fieri non permittat minus iuste ut dicit, Et habeas, &c. T. &c.

Aliter pro ratione faciend. pro viro & uxore sua versus tertiam hæredem ubi vir uxoris perquisivit unam partem coheredum.

Essex. ff. **C**AROLUS, &c. Vic. Essex salutem. Si W. & J. uxor ejus fecerunt, &c. ostensur. quare cum iudem W. & Johanna in jure ipsius Johannæ de proparte ipsam de Manerio de T. quod fuit Joannis A. Patris prædicti. Johannæ cujus una hæredum ipsa est contingenti, idemq; W. virtute Feoffamenti sibi per Agnetam A. filiam & alteram hæred. prædicti. Joannis de proparte ipsam Agnetam de eodem Manerio contingenti facti, ac præfata Margareta filia & tertia hæred. ejusdem Joannis in simul & indiviso teneant Manerium prædictum cum pertinentiis: eadem Margareta partitioni unde inter eos secundum legem & consuetudinem, &c. non permittit, &c.

NOte, That the Summons varies in the Case where there are three or four Copartners, and likewise where it is between Joynt-Tenants, or Tenants in common, the Summons according to their several Cases, were too large here to infer.

Having your Summons thus made returnable of any Term, the Defendant may Essoin if he will.

If the Defendant do Essoin, it rests on the Plaintiffs part to adjourn it, as if the Summons, *Tres Michaelis*; he may adjourn to *Craftino Martini*, and then issues out from the Philizer, a Writ called a *Pone*, returnable, *Octavia Hillarii*, and then upon that returned by the Sheriff, you must file your *Pone* with the Philizer, which warrants the making out of a

Distringas

Disfringas, returnable *Ostabis Purificationis*, and upon that get an Amerciament of five pounds, if the Defendant appear not, then you may have an *Alias Disfringas*, returnable in *Easter* Term, doubling your Issues, and so to Distress infinite till he do appear.

Where the Defendant as before doth cast an Effoyn, and there is no adjournment made thereof, the Defendant may enter a *Nonfuit* against the Plaintiff, if he be careful first to enter a *Ne recipiatur* with the Clerk of the Effoyns, upon the day of the Exception, upon which *Nonfuit* the Plaintiff must begin again.

Where there are several Defendants, they may have several Effoins, if they would protract time before appearance; and where they Effoyn not upon the Summons, they may upon the *Pone*.

If they do not Effoyn, but appear, you may declare in your Declaration :

Back. ff. **A**. C. Mil. in misericordia pro plur. defalt. Et præd. T. & A. W. Ar. summ. fuer. ad respond. P. T. gen. de placito quod cum idem P. & præd. A. T. infimul & pro indiviso teneant sibi & hæred. suis Maner. de D. cum pertin. iidem A. & T. partitionem inde inter eos secund. formam Statuti in hujusmodi casu provis. faciend. contradixer. & cum fieri non permittunt minus juste & contra form. Stat. præd. & unde idem P. per J. H. Attornat. suum dic. quod cum idem P. ac præd. T. & A. infimul & pro indiviso teneant sibi & hæred. suis præd. Maner. cum pertin. unde ad ipsum P. & hæred. suos pertin. ad habend. unam partem præd. Maner. cum pertin. in tres partes dividend. Et ad præd. A. & hæred. suos pertin. ad habend. unam aliam partem præd. Maner. cum pertin. in forma præd. dividend. Et ad præd. T. & hæred. suos pertin. ad habend. unam tertiam partem residuam inde inform. præd. dividend. Tenend. eis inseparalitate, Ita quod præd. P. de parte sua præd. ipsum de præd. Maner. cum pertin. contingen. Ac præd. A. de parte sua ipsum de præd. Maner. cum pertin. contingen. Ac præd. T. de parte sua ipsum de præd. Maner. cum pertin. contingen. separatim approbare se possint iidem A. & T. partitionem inde inter eos secundum formam Statuti in eodem Casu provis. faciend. contradicunt & cum fieri non permittunt minus juste & contra formam Statuti, &c. Et inde dic. &c. In

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In these Actions the Pleas are various, as the title may be. The Defendant may plead the Freehold solely in himself at the time of the Plaintiffs issuing forth his original Writ, and traverse, That they hold it together and undivided, &c. whereupon he prays Judgment, whether Partition ought to be made between them, &c.

To this Plea the Plaintiff may take the issue upon the traverse, and if so, they may joyn issue, and so proceed to Trial.

Upon a Verdict and Judgment had for the Plaintiff, he may have his Writ of Partition directed to the Sheriff, commanding him to take twelve Men of the County; and of the *Venne*, in the presence of the Copartners to make Partition; by vertue of which Writ he summons a Jury of the said twelve Men, and in the presence of the Parties concerned, he makes Partition, and then his Return is as follows :

*Executio hujus brevis patet in Inquisitione huic
brevium annex.*

Virtute brevis Dom. Regis mihi direct. & hujus Inquisitione Indentat annex. Ego J. D. Miles Vic. Com. præd. x die A. anno, &c. assumptis mecum duodecim probis & legal. homin. de Com. præd. ac de Vicenro infra script. in præsentia H. L. R. M. in breve præd. nominat. in propria persona mea accedi ad tenement. in brev. præd. mentionat. ac ibid. per sac. suum habens respectum ad verum valorem eorundem tenementor. cum pertin. fieri feci tenement. ill. in partitionem in tres partes equales, una parte quarum trium partium videlicet, *such and such Lands so abutted and bounded*, Ego præfat. Vic. primo die *Mass*, Anno, &c. fieri feci assignat. & allocat. H. C. in eodem br. nominat. Tenend. sibi in separalitate secundum formam & effectum brevis præd. Et quoad duas alias partes prædictor. tentor. in brevi præd. specificat. resid. Ego præd. Vic. Justiciar. infra script. certifico quod null. de parte tenement. duas partes de me præfat. Vic. recipiend. Ita quod illas duas partes illis alter. duobis assignat. sive deliberare non possum prout breve prædict. in se exigit & requirit. In cujus rei testimonium tam sigillum mei præd. Vic.

A Partition thus made by the Sheriff, and by the Oath of twelve Men, and Judgment thereupon given, shall bind an Infant, though his part be unequal. *Co. Lit. 171. b.*

Note,

Note, a Partition between Joynt-Tenants is not good without Deed, albeit it be of Lands; and that they be compellable to make Partition by the Statute of 32 H. 8. cap. 10. and cap. 32. because they must pursue that Act by Writ *De partitione faciend.*

And note, That you are to take out this Writ *De partitione faciend.* executed by the Sheriff, together with the Sheriffs return *Verbatim*, into the remembrance in the Prothonotaries Office, and then the Prothonotary Signs Judgment thereupon.

The Fees incident to this Action you will find in the general Table of Fees.

We proceed now to treat of Dower.

Dower in the Common-Law, is taken for that Portion, &c. which the Widow hath for term of her life, of the Lands or Tenements of her Husbands, it is called *Dower* or *Dowry*, as a gift, because the Law it self doth (without any gift of the Husband himself) give it to her; its commonly taken for the third part which she hath of her Husbands Lands after his Decease. *Co. Lit. 31. & Co. Lit. 32. a.*

To the consummation of this *Dower* three things are necessary, Marriage, Seisin, and the death of the Husband.

This provision the Law hath made for a Widow, where the Husband hath not assigned in his life-time, part of his Lands to his Wife. By Gavelkind she is to have half, *dum sola & cast.* but she cannot waive it, and take her thirds, *2. com. tollit Communem Legem. Co. Lit. 33. b.*

Dower by the customs of some Places, (as Gavelkind Land, &c.) is to have half the Husbands Lands. *Co. Lit. 30. b.*

This Writ of *Dower* lies where a Man is sole seised of Lands or Tenements in Fee-simple, or Fee-tail, during the Coverture between him and his Wife, where by possibility the Issue between them may inherit, if such a man die, his Wife shall recover the third part of all the Lands whereof the Husband was sole seised, any time during the Coverture, by a Writ of *Dower*, though he died not seised, and although that he made Alienation thereof in his life-time;

Where

Where the Husband died seised, and the Wife brings a Writ of *Dower* and recovers, she shall recover Damages for the profits of the Land incurred, from the time of the death of her Husband; but if there were any Estate or Alienation made of the Lands, &c. during Coverture, so that the Husband died not seised, in that case he shall recover no Damages for mean Profits, although she recover the Land, 2 *Inst.* 80. *Co. Lit.* 32. *b.*

Dower unde nihil habet lies for a Wife that hath received no part of her Dower. The Demand is instead of a Count. No special Essoyn lies. Part shall not demur for the non-age of the Heir. Warranty of the Ancestor is no bar.

It is not necessary that Seisin should continue during Coverture, for being once seised, it sufficeth, although he alien Lands, or extinguish Rents, yet the Woman shall be Endowed.

But it is absolutely necessary that the Marriage continue, for if that be dissolved the Dower ceaseth.

In case of *Elopement*, which is where a Woman leaves her Husband, and goes away with an adulterer, and dwelleth with the adulterer, without voluntary reconciliation to her Husband, by this she shall lose her Dower: *Co. Lit.* 32. *b.*

A Woman shall not be Endowed of a Common without husband in gross, nor of an Annuity, &c. nor of Rents, &c. If the Free-hold of the Rents were suspended before the Coverture; but she shall be Endowed of Tythes, of the third part of the profits of Courts, Fines, Heriots, &c. *Co. Lit.* 32. *a.*

She shall be Endowed according to the value of the Land at the time of the Assignment, and not according to the value as it was in the time of her Husband, whether the value of the Land by Building, or otherwise be improved, or whether it be impaired by the Heir. *Co. Lit.* 32. *a.*

If the Wife be past the age of nine years at the time of the death of her Husband, (albeit she were but four years old when she was Married), yet she shall be Endowed. *Co. Lit.* 32. *a.*

If a Woman Marry before she be of years to consent, which is twelve in a Woman, and fourteen in a Man, yet that Imperfect or inchoate Marriage (from which neither of the Parties at the age of consent may disagree) after the death of the Husband, shall give Dower to the Wife. *Co. Lit.* 33. *a.*

If

If the Heir, &c. put her out within forty days, she shall have a Writ of *Quarentina habenda*, which is a Writ that the Law gives, where a Man dies seised of a Mannor Place, and other Lands, whereof the Wife ought to be Endowed; there a Woman may abide in the Mannor-Place, and there live of the store and profits thereof for the space of forty days; within which time her Dower is to be assigned, as by *Magna Charta*, cap. 6, 7. If she marry within the forty days, she loseth her Quarentine, 2 *Inst.* 16, 17. See the nature of the Writ of *Quarentina habenda*, 2. *Inst.* 10.

There needeth neither Livery of Seisin, nor Writing to any Assignment of Dower, because it is due of common right, and the Assignment must be of some part of the Land, or of a Rent, &c. issuing out of the same. *Co. Lit.* 34. b.

The Assignment must be certain and absolute, and by such as have Free-hold, or against whom a Writ of Dower lyes, *Co. Lit.* 34. b. 35.

Assignment of Dower must be either by the Sheriff by the Kings Writ, or else by the Heir, or other Tenant of the Tand by consent and agreement between them, *Co. Lit.* 34. b.

A Joynture was formerly no bar of Dower at the Common-Law, but now it is by the Statute of 27. H. 8. if the Joynture be made to the Wife, according to the Purview of that Statute. *Co. Lit.* 36. b.

Six things are required to a perfect Joynture:

First, It is to take effect for her life in possession, or profits, presently after the Decease of her Husband.

Secondly, That it be for term of her own life, or greater Estate. *Co. Lit.* 36. 6.

Thirdly, It must be made to her self, and no other for her.

Fourthly, It must be made in satisfaction of her whole Dower, and not of part, &c.

Fifthly, It must be either expressed or averred to be in satisfaction, &c.

Sixthly, It may be made either before or after Marriage.

If the Joynture be made before Marriage, the Wife cannot wave it, and claim her Dower at the Common-Law; but if it be made after marriage, she may wave the same. *Co. Lit.* 36. b.

A Joynture made to the Wife above or under the age of nine years, is good.

The wife shall not be indowed of the Lands which the husband holdeth jointly with another at the time of his death, &c. for that the joint-Tenant which surviveth, claimeth the lands by the Feoffments, and by the Survivorship which is above the title of Dower; but the Tenants in common have several Free-holds and inheritances, and their moyeties shall descend to their several heirs, and therefore their wives shall thereof be indowed, *Co. Lit.*

THe process incident to this Action of Dower are,
First, A Summons between the *Tasse*, and return, whereof there is five returns. *Per Stat. 16 Car. cap. 6*

And if the tenant neither appear, nor cast an Effoin entring a *Recipiatur*, a grand *Cape* lyes to seize the Lands, &c. for that for such his default, the tenant shall lose his land.

But if he wage his Law of *Non-Summons*, he shall save his default, and then he may plead with the Demandant. Note, that if he wage his Law, the Writ abates, and the usual way is to remit the default. No special Effoin lyes.

Note that in a grand *Cape*, the Tenant shall be summoned to answer to the default, and further to the Demandant; but in *Petis Cape*, he shall be summoned to answer to the default only, and not to the Demandant, and it is called a *Petis Cape*, because it inclines less than the other.

And if the tenant by the return of the Summons, effoins, the demandant adjourns *five returns*, in such case the Attorney for the Tenant, may enter with the Filizer, that the Tenant appears and prays view, &c.

Then a Writ of view * goes out, whereby the Sheriff is to show the Tenant the lands in question, which supposeth the Tenant knows not well what land it is that the Demandant taketh, by the return of which Writ of view, the Tenants Attorney takes a Declaration.

* Unless the View be counter-pleaded: of which see 2 Inst. 481

Note, that where default is made before appearance there at the demandant his suit, the grand *Cape* is made by the Filizer of the County where the land lyeth. Note, the *Petis Cape*, after appearance and declaration received, is not made by the Philizer.

The Form of a Summons. Reg. 170.

PR. A: quod iuste &c. reddat B. que fuit ux. C. rationabilem dotem suam, quæ eam contingit de libero tenemento, quod fuit præd. C. quondam viri sui in N. unde nihil habet ut dicit &c.

In case the tenant appear upon the summons, &c. Then you declare as follows,

Hill. 16 Car. Regis.

Effex. ff. **A**. C. vidua que fuit ux. Jo. C Clerici per N.C. Attorn. suum pet. versus E. C. tertiam partem unius Messuagii, unius horrei, unius stabuli, unius gardini, unius pomarii, duodecim acrarum terræ, sex acrarum prati & sexdecim acrarum Pasturæ cum pertin. in B. ut dotem ipsius Alicie ex dotatione prædict. Johannis quondam viri sui per breve Dom. Regis de dote unde nihil habet &c.

Et prædicta E. per C. N. Attorn. suum rev. et petit visum detentionis prædict. cum pertin. &c. habeat &c. dies dat. est partibus prædictis hic a die Paschæ in quindecim dies &c.

ET præd. D. cogn. Actionem inde per W. K. attorn. suum ven. & dicit quod ipse non potest didicere Actionem præd. M. præd. nec quin eadem M. dotem suam de præd. uno Mess. &c. cum pertin. unde &c. ex dotatione præd. C. habere debeat prout eam superius pet. Et dic. quod ipse a tempore mortis præd. C. hucusque paratus fuit & adhuc existet ad reddend præfat. M. dotem suam præd. Et illam præd. M. hic in Cur. reddit. Ideo conf. est quod præd. M. recuperet dotem suam versus præfat. D. de tertia parte præd. cum pertin. & nihil de mis. præd. D. quia ven. primo die per sum. &c.

Linc. **E**. D. vid. que fuit uxor. G. D. per J. H. Attornat. suum petit versus J. D. Tertiam partem decem messuagiorum, ducent. acras terræ, Trecent. acrarum prati & ducent. acrarum pasturæ cum pertin. in C. & B. ut dotem ipsius E. D. ex dotatione prædicti G. D. quondam viri sui &c.

To this Action there may be several Pleas, as the case may require.

The most general plea is, (*Ne unquā seized que Dower*) That is to say, that the husband was never seized of any Estate, whereof the wife can be endowed, the form whereof is as follows:

Ne unquē seized que Dower, pleaded in Dower.

ET præd. G. per J. F. Attornatum suum ven. & dicit quod prædicta E. dotem de tenementis prædictis cum pertin. unde &c. ex dotatione præd. G. quondam viri sui hæred. non debet quia dic. quod idem G. quondam vir. die quo ipse præfat. E. desponsavit nec unquam postea fuit seized. de tenementis præd. cum pertin. unde &c.. de tali statu ita quod prædict. Eliz. similiter.

There is a Plea likewise of *N. n. tenure*, which is as follows.

Non-tenure pleaded in barr of Dower.

ET præd. R. per A. B. Attornat. suum ven. Et dic. quod ipse non possit Manerium præd. cum pertin. ut dotem ipsius M. reddere quia dic. quod ipse non est inde tenens ut de libero tenement. nec fuit die impetrationis brevis præd. Mariae nec unquam postea, & hoc parat. est verificare, unde pet. Judicium de brevi præd.

ET præd. Maria dic. quod breve suum præd. ratione præallegat cessari non debet, quia dicit quod die impetrationis brevis sui præd. scil. 20 die M An. decimo quinto Regis fuit, præd. R. fuit tenens ut de libero tenemento de Manerio præd. cum pertin. prout per breve suum præd. supponitur. Et hoc pet. quod inquiratur per patriam, et præd. R. similiter. ideo precept. est vic. quod venire fac hic in octabis Sanctæ Trinitatis. per quos &c. & qui nec &c. quia tunc &c. ad quem diem hic ven. partes &c. Et vic. non null. breve ideo sicut prius Precept. est vic. quod &c.

Non-age in barr of Dower.

ET præd. R. per T. S. Attornat. suum ven. & dic quod præd. N. in hac parte dotationem habere non debet. Quia quod præfat. N. tempore mortis præd. R. quondam viri

sui ex cuius dotatione &c. non fuit plen. etat. ut dotem suam mereri potuit scil. de Novem Annorum & Dim. & hoc parat est verificare unde pet. Judicium &c.

ET prædict. N. dic. quod ipse præfat. N. tempore mortis ipsius prædict. R. quond. viri sui &c. de tal. etate fuit, ita quod mereri potuerat dotem scil. de etate Novem Annorum & Dim. & amplius, & hoc petit quod inquiratur per patriam & prædict. R. M. similiter. Ideo precept. est Vic. quod ven. fac. duodecem &c.

Elopement in Barr.

ET præd. J. & L. per T. L. Attornat. suum ven. & dic. quod præd. R. & A. dotem de Manerio & tenementis præ. cum pertin. ex dotatione prædict. E. quondam viri præd. A. habere non debent quia dic. quod præd. A. in vita præd. E. quondam viri sui sponte & gratis apud B. in Com. M. de eodem viro suo recessit & ab eo cum M. R. abiit & se elongavit in parochia de C. in com. M. & postea ibidem cum eodem M. (vivente præd. E. quondam viro suo) in adulterio moram trav. durante vita præd. E. quondam viri sui absque hoc quod præd. A. eidem E. quondam viro suo in vita præd. E. quondam viri sui reconciliata fuit, & hoc parat. est verificare. unde petunt Judicium utrum præd. R. & A. in hac parte dotationem habere debeant de Manerio & tenementis præd. cum pertin. de dotatione præd. E. quondam viri præd. A. &c.

ET præd. R. & A. dicunt quod ill. per aliquæ præ-allegata ad habend. dotationem de præfato A. de Manerio & tenementis præd. cum pertin. versus præfat. J. & L. secludi non debeant quia dicunt quod post recessum, præd. A. per præd. J. & L. supposit. fieri, præd. E. tempore vitæ suæ, ipse præd. E. sponte & gratis absque coertione ecclesiastica apud L. se reconciliavit & permisit ipsam secum commorari, & hoc parat. sunt verificare unde pet. Judicium & dotem ipsius præd. A. de Manerio & tenem. præd. cum pertin. una cum dampnis suis occasione detentionis dotis præd. ad judicari &c.

Et præd. J. & L. dicunt quod præd. E. in vita sua non reconciliavit se modo & forma prout præd. R. & A. superius allegavit & super hoc pon. se super patriam. Et præd. R. & A. similiter Ideo Precept. est Vic. &c. duodecem, &c.

A man may call to Warranty in Dower, and then is the Party called to Warranty summoned in the County where he lies, and that by the aid of the Court, and this is called a Ceunter-plea of the Voucher in Dower, and is thus:

Counter-plea of Voucher in Dower.

ET præd. I. per C. B. Attorn. suum ven. & vocat inde ad Warrant. R. C. gen. summonit, in Com. præd. per auxilium Cur. &c.

To this the Defendant may reply, that the Party calling to Warranty, hath nothing in the Lands, &c.

Et præd. I. dic. quod nec præd. R. quem, &c. nec aliqui antecessor. suor. aliquid habuit sive habuerunt in tenementis præd. cum pertin. in dominico suo ut de feodo in reversione, &c. a tempore mortis præd. W. C. quondam viri sui usq; diem emanationis brevis original. dict. I. F. scil. 10. die Maii, An. no regni Dom. Regis nunc decimo quinto per quod encossat potuit præd. I. aut aliquis antecessor. suor. Et hoc petit quod inquirat. per patriam & præd. I. similiter Ideo præcept. est. viz. quod ven. fac. duodecim, &c.

An Annuity may also be pleaded in bar of Dowry, but is too long here to recite.

To this Action, in case the Tenant hath no special matter to plead in bar, then he may confess an action by *Non sum informatus*, or let it pass by default, as in the ensuing.

Non sum informatus in Dower.

ET præd. E. per T. S. Attorn. suum ven. Et præd. Attorn. dic. quod ipse non est informat. per mag. suum de aliqua responsione pro eodem P. S. in placito præd. Dand. nihil aliud inde dicit per quod præd. P. S. reman. versus præd. E. inde indefensus. Ideo considerat. est quod præd. P. S. recuperet sezin. suam versus præd. E. de tertia parte præd. manerii, Parci liberi warren. tentor. & advocat. præd. cum pertin. Et præd. E. in misericordia, &c.

Et super hoc præd. P. S. petit breve Dom. Regis vic. Com. præd. dirigen. quod liberari faciat de in plenar. possess. de tertia parte præd. cum pertin. Et ei concedit retornabile hic in octabis scil. Mar. Et ulterius præd. P. S. dic. quod præd. E. quond. vir suus obiit seitz. de manerio, &c. in dominico suo

ut de feodo ac de advocacione præd. ut de feodo & jure, & pet. breve Domini Regis vic. Com. prædict. dirigen. Ad inquirend. de dampnis, & ei conceditur retornabile, &c.

Note, That in this, as in other real Actions, when you plead for the Defendant, you say onely (*comes and says*) and not as in other Actions, defends the force and injury, &c.

When Issue joyned you would go to Trial, you must proceed with your *Venire facias*, and *Habeas corpora*, and record, as in other Actions, and upon Trial, the Jury to give in Damages * for the mean Profits, from the death of the Husband, and for that you shall have Execution made by the Clerk of the Judgments who entred up your Judgment. ** If her Husband die seized per Stat. Mer. c. 1.*

And then you have a Writ to the Sheriff to give possession of a third part, &c. which Writ being executed by the Sheriff, is thus returned.

Note, If the Tenant make default at the Assize, you must have a *Peris Cape* before grant of Seisin can be awarded.

The Return on the back of the Writ.

Executio istius brevis patet in quadam schedula huic brevi annex.

The Schedule.

Virtute brev. Dom. Regis mihi direct. & huic schedula annex. (primo die *Majii* Anno, &c.) habere feci *I. B.* vid. in præd. brevi vocat. plenar. seisinam de tertia parte Maner. de *B.* cum pertin. in eodem brevi specificat. videl. (& reherdes per particulers ut in brevi.) Tenend. præfat. *J. B.* in feodalitate per metas & bundas nomine totius dotis ipsius *J. B.* conringen. de toto manerio in dict. brevi specificat prout per breve præd. mihi præcipitur.

Formedon.

Formedon is a Writ of Right in its nature, which in its nature is Demandant according to the form of the Gift.

The first is *Formedon* in the *Discender*, which lieth where Tenant in Tail enfeoffed a stranger, or is disseised and dieth,

dieth, the Heir shall have Writ of *Formedon* to recover the Estate. *F. N. B.* 211. for the *Formedon in disc.* see more at large *F. N. B.* and *vet. N. B.* 143.

Formedon in discender lay not at Common-Law, but is given by the Statute *W. 2. cap. 1.*

The second is *Formedon* in the remainder, and that lies where one gives Land in tail and for default of Issue, the remainder to another in tail, and that for fault of such issue, the Lands shall revert to the Donor, if the Tenant in tail die without issue, he in the remainder shall have this Writ. For the *Form.* in *Rem.* see *F. N. B.* 217. *b.* *vet. N. B.* 147. *b.*

Form. in reversion for life or in fee upon a Lease for life expired, for after the Estate tail expired, this Writ did not lie at the Common-Law, because it was an Estate of Fee-simple, upon which no reversion can depend.

The third is a *Formedon in Reverter*, and lieth where the Tenant in Tail dies without Issue, and he in remainder dies also without Issue, then the Donor or his Heirs shall have a *Formedon* in Reverter

For the *Formedon in Reverter* see *F. N. B.* 219. *b.* *vet. N. B.* 149. *b.*

Formedon in reverter is for the Donor after the Estate tail determined, as (at the Common-Law) if the Donee in tail had aliened, and after died without Issue, or if he had Issue, and after had aliened, and then had died without Issue.

Where Tenant in tail aliens, or is disseised, or if a Recovery be had against him by default, and that he die, his Heirs shall have a *Formedon*, for the Heir shall not have a Recovery for the possession of his Ancestors, then by *Formedon*, but he be outed of his own possession, as if he be seized and put out, he shall have his Writ of Assize. *F. N. B.* 145. *Kitching* 247. *12. H.* 49.

Formedon lies by the Heir of a Gift made before the Statute of *Westminster 2.* where the Donee after the Statute aliens and dies.

Note, This is where there is Tenant in Dower the Remainder to another in tail, *Sur intrusion apres mort del tenant*, or Curtesie, or in Dower.

Where there is a Tenant in Dower, or by the Curtesie. The Reversion to another in tail, if one intrude after the death of

the Tenant in Dower, by the Heir of Curtesie, he in the Reversion shall not have intrusion, but a *Formedon*. *F.N.B.* 204.

Woman in tail takes a Husband which aliens, and after they are divorced, and after the Wife dies, the Wife shall in this case have a *Formedon*, and not a *Cui in vita*. *F.N.B.* 204. k.

If Tenant in tail lets for life, and the Tenant for life aliens in fee, the Tenant in tail shall have a *Formedon* at his pleasure, & *confinili casu*. *F.N.B.* 207.

Where Land is given to one for life, the Remainder to the Father in tail (if it were executed in the Father) and he aliens; the Issue may have a *Formedon in Discender* generally, or may have a special Writ, making mention how it was given for life, the Remainder to his Father in tail, and one of other is good. 44 E. 3. 6.

In Conveyance of degrees, you need not name him Heir, but Son of him which was not seised, but it is a surer way to name him Son and Heir to every one, if he were seised or not; but he cannot omit any in his Writs which were seised. *Kitch.* 248.

If the Demandant omit in *Formedon* one who hath held the Estate, that is to say, who was seised, the Writ shall abate. *Kitch.* 248.

The Demandant in this Writ ought to make his Discend by all which hold the Estate, otherwise the Writ shall abate. 44 E. 3. 40. 46 E. 3. 9.

Though the Demandant be made Heir to him which died in the life-time of his Father, which was not seised, yet the Writ shall not abate; but is good. 48 E. 3. 7.

Note, By the Register it is held that he ought to make him Son to every one, and Son and Heir to him which last holds the Estate; but if he makes him Son and Heir to every one that is more, and good, notwithstanding that every one did not hold the Estate. 11 H. 6. 25.

The Writ is not the worse, although in the same it be mentioned; that he is Heir of one, or that he should have scarce been Heir to him if he had lived, if he be Heir to him that was last seised. 11 H. 4. 70.

The Demandant in *Formedon*, ought to name him Son and Heir to him that was seised; but if one survive his Father, and were not seised, he need not name himself Heir, but Specially. *F.N.B.* 212. f.

Formedon

Formedon did abate, for that the Demandant made himself Cousin and Heir to the Donee, where his Father was seized after the death of the Donee, and no mention was made of him. 10 E. 3. *tit. Form.* 41.

Esplees shall be alledged in *Formedon in Reverter*, in the Donor and in the Donee, and in *Formedon in Descender*, and Remainder, in the Donee onely. 5 E. 3. 1. *Fitz.* 220. In a *Formedon in Descender* the Esplees shall be onely in the Donee, in a *Formedon in Remainder* for an Estate tail, onely in the particular Tenant to prove the Estate tail executed, in a *Formedon in Reverter* they shall be laid in the Donor and Donee, for there a Fee-simple is demanded. In a Lease for life, Remainder in tail, and the Lessee for life, and he in Remainder in tail dies, the Issue in tail shall have a *Formedon in Descender*, and shall not make mention of the Tenant for life, therefore the Esplees shall be onely laid in the Tenant in tail, otherwise it is in such case a Reversion in tail granted. 9 H. 6. 53. 50 E. 3. 10.

Those Esplees is as it were the seisin or possession of a thing, Profit, or Commodity, that is to be taken, as of a Common, the Esplees is the taking of the Grass, or Common by the Mouths of the Beasts that Common there; of an Advowson by taking the grass, tythes by the Parson presented thereto; of wood, the felling of wood; of an Orchard, the selling of Apples and other fruit growing there: Of a Mill the taking of toll is Esplees, and of such like.

Vide Finch 79. How Esplees shall be alledged, and the forms thereof.

Note, That in a Writ of Right of Land or Advowson, &c. The Demandant ought to alledge in his Declaration, that he or his Ancestors took the Esplees of a thing in demand, or otherwise the pleading is not good. 9 H. 6. 53. *Formedon in Remainder*, he alledgeth Esplees in the Tenant for life, and not in the Donor.

Formedon in the Remainder, he counts upon the matter without laying Esplees in the Donor, & it is good. 27 E. 3. 36.

Of what things a Formedon lieth, and what not.

F*ormedon* lieth of Gorse, but not of an Advowson. F. N. B. 217.

It

It lies of Pasture for ten Beasts, or a certain number, but not of Common; for there a Writ called *Quod non permittas*, &c. F. N. B. 212.

Formedon lies of a Common in gross. Stat. 95.

Formedon lies of a Corody, that is to say, of Rent, and certain breads, &c. 18 E. 3. Stat.

It lies for the Moiety, or profit of a Mill, which is granted to one and the Heirs of his Body, and the Donee dieth, and his Heir is deforced of this profit; now the Heir shall have Writ of *Formedon* in *Descender* for this profit.

The form of the Writ, when it is in *Descender*, runs thus.

In Descender.

R Ex, &c. vic. C. salutem Pr. T. B. quod, &c. reddat J. M. medietatem exituum provenien. de duobus molendinis ipsius J. M. cum pertin. in M. quam E. C. dedit S. C. & hæred. de corpore suo exeuntibus, & quæ post mortem, &c.

In Remainder.

R Ex, &c. Vicecom. C. salutem Pr. A. quod reddat B. unum mesuagium, &c. quod C. dedit D. & hæred. de corpore suo exeuntibus. Ita quod si idem D. sine hæred. de corpore suo exeunt. obiret, præd. mesuagium præfat. B. & hæred. remaneret & quod post mortem præd. F. D. præfat. B. remanere debet per formam donationis præd. eo quod præd. F. D. obiit sine hæred. de corpore suo exeunt ut dicit, &c.

In the Reverter.

R Ex, &c. Vicecom. G. salutem. Precipe A quod reddat B. (tantum, &c.) quod C. pater prædict. B. cujus heres ipse est, dedit J. & F. ux. ejus, & hæred. de corporibus ipsorum J. & F. ad præfat. B. reverti debet per formam donationis præd. Eo quod prædict. J. & F. obierunt sine hæred. de corporibus suis exeunt. ut dicit. Et nisi, &c.

This Writ is called a *Summons*, and hath nine Returns betwixt the Teste and the Return, and the Process are the same which are in Dower after the Summons, that is, a *Grand Cape*, Writ of View, and *Petite Cape*.

In

In this Action, as also in that of Dower, and other real Actions, the Plaintiff is called Demandant, and the Defendant Tenant; and in mixt Actions, Plaintiff and Defendant.

Note, That there is a great care to be taken by the Attorneys on both sides, in the course of casting Esloyns, adjourning and entring, *Ne recipiatur*, with the Clerk of the Esloyns, and getting *Nonsuits*; for that thereby much prejudice or advantage may come to their Clyents Causes.

Note, That at the Common-Law, in a *Quare Impedit*, the Process was Summons, Attachment, and Distress infinite, by the Statute of *Marlb. cap. 12*. If he appear not at the Grand distress, Judgment shall be given for the Plaintiff, and a Writ to the Bishop.

If we should now in this Action, as in that of Dower, descend to the several Declarations, in order to the several *Formidons* in *Discender*, *Remainder*, and *Reverter*, together with the various Pleas thereto, it would take up more room than can be spared in this little Tract.

Let it suffice that we told you that the Proceeds were much like to that in Dower.

Let us proceed to a *Quare Impedit*.

Q*uare Impedit* lies where a Man hath purchased a Man-
nor, to which an Advowson of a Church is appen-
dant, a Parson dies, and an Estranger presents his Clerk.
F. N. B. 26.

Assise of *Darrein Presentment* lies where I or my Ancestor have presented to a Church our Clerk, and after our Clerk dies; so that the Church becomes void, and an Estranger presents his Clerk to the same Church, and disturbs me, I may have this Writ, or a *Quare Impedit*, at my Election.
F. N. B. 25.

Also, if the Plea be depending between two Parties, and be not discus'd within six Moneths, then the Bishop may present by *Lapse*, and he that hath right to present, shall recover his damages, as it appears by the Statute of *West. 2. cap. 5.*

A Writ of Right of Advowson lies as here it is said, *F. N. B. 36. b.*

Also if one have right to present after the death of a Parson, and bringeth no *Quare Impedit*, or *Darrein Presentment*, but suffereth

suffereth a stranger to usurp upon him, yet he shal have a Writ of right of Advowson, but this Writ lieth not, unless he claim to have the Advowson to him and his Heirs in Fee-simple.

A *Quare Impedit* may be brought by him who hath a grant of the next avoidance.

It lies for the Moiety, of the third part of the Advowson, and of the Advowson, or Moiety of the third part.

It lies for a Chantry, which is a Donative, and he hath it by Letters Patents, and that it be void, and he present to it his Clerk, who is disturbed by another, or another presented to the said Chantry, he which hath the Right, shall have his *Quare Impedit. vet. F. N. B.*

Formerly a *Quare Impedit* might be brought for an Abbey, or Priory.

A *Quare Impedit* lay likewise for an Hermitage, it was brought formerly against the Bishop, together with others that claim or disturb: The form of the Writ in general is thus:

Quare Impedit.

R Ex, &c. Vicecom. L. salutem præcipe A. B. quod iuste, &c. permittat T. L. præsentare idoneam personam ad Ecclesiam de L. quæ vocat & ad suam s. ecclat donationem ut dicit. Et unde queritur quod præd. A. cum injuste impedit. Et nisi, &c.

Note. The Process at Common-Law was sum. Attachment, and Distress infinite; but *per Stat. Mar. 12.* if he appear not at the grand Distress, Judgment shall be given for the Plaintiff. *Vide cap. 2. Inst. 124.*

This Writ is a Summons at the Plaintiffs suit, and if there be two or three Defendants, they may all essoyn one after the other, and after they have essoyned, your Proceeds are the same, as in the Action of Partition by a *Pone* and *Disfringas*, which makes the Proceedings of this Action very tedious, the Defendant using all possible delays he can, for that most usually he hath gotten into possession, and so holds them Plea with their own Weapons, and gains many times a year or two, the Profits of the Tythes.

This delay is avoided by the Stat. ut supra, and by the same Stat. the proceedings are but firm 15 days. v. 15 days.

But

But in case the Church be void, and that the Plaintiff do fear that the Defendant well get in, or formerly that the Bishop will Collate his Clerk, then he might have a Writ directed to the Bishop, which is called, *Ne admittas*, and this Writ must be brought while the Action is depending in the *Common-Bench*, whether by *Quare Impedit*, or *Darrein presentment*, and this Writ ought to be sued within six Months after the voidance, for after the six Moneths he shall not have this Writ; for then the Living may be presented unto by *Lapse*, and therefore it is in vain then to sue this Writ, for that the Title of presenting is devolved to the Bishop, but the King might sue this Writ after the six Moneths, having a Writ of *Quare Impedit*, or *Darrein Presentment* depending, according to that Maxim, *Nallum tempus occurrit Regi*, and the Writ of *Ne admittas*, is as follows, in case it were for the King in his time.

Ne Admittas.

REX, &c. Venerabili in Christo Viro W. divina gra. Lincoln. Episc. salut. prohibemus vobis ne admittas personam & Ecclesiam de J. quæ vacat ut dicitur, & de cujus advocacy contentio mota est in Cur. nostra inter vos & A. donec discussum fuerit in eadem Cur. utrum ad vos an ad præfat. A. pertinet ejusd. Eccles. advocat. (vel sic) inter A. & B. & C. uxorem ejus donec &c. utrum ad præd. A. an ad præd. B. & C. pertineat ad ejusdem Eccles. &c. advocatio.

Note, that the Defendant as well as the Plaintiff, may sue out this Writ, if the Defendant do suppose that the Bishop will admit the Clerk of the Plaintiff, the suit depending, but, as we said before, this Writ of *Ne admittas* lies not, unless the Plea be depending in Court, by *Quare impedit*, or *Darrein presentment*, and for that purpose there is a Writ in the Register, directed unto the chief Justice of the *Common-Pleas*, to certify the King in the Chancery, whether there be any Plea depending before him and his Companions, by Writ between (such and such) and by this it seemed, that the *Ne admittas* should not be granted, before the King were certified in Chancery, and such a Plea of *Quare impedit*, or *Darrein presentment*, were depending in the *Common-Bench*. But at this time the course is other wise, that the *Ne admittas* may be granted out of

of the Chancery, directed unto the Bishop, that he shall not admit, &c. before that the King be certified in Chancery, that such Plea of *Quare Impedit*, or *Darrein Presentment*, is depending in the *Common-Bench*.

And if the truth be, that there be no such Plea depending in the *Common-Bench*, than the Party grieved may require the Chief Justice to certify the King in his Chancery, that no such Plea is there depending, upon which the Party grieved shall have a Writ to avoid the *Ne admittas*. F. N. B. 38. b.

If the Defendant or Defendants in this Action do appear, you must prepare your Declaration, wherein you must lay down your Title, which many times causeth the Declarations and Pleadings to be very long in this Action, and therefore cannot be expected to be inserted here, as in other small ones.

In case after special Pleadings you come to an Issue, and having your Issue joyned, and your Paper-Book made, and that you would go to Trial, you must take your *Venire facias*, which differs not from other *Venire facias*, but onely in these words, (of a Plea *Quare Impedit*) and that made, signed, sealed, and returned, you must sue out your *Habeas Corpus*, and proceed with your Record, as in other.

When you have a Verdict for the Plaintiff, and the *Postea* returned, and Judgment entred; you may then have a Writ to the Bishop to admit your Clerk, or to the Metropolitan, which is thus; when the Recovery is had against the Bishop himself.

Rex, &c. *Venerabili in Christo Patri W. Episcopo W. salutem, Cum T. L. Miles in Curia nostra, &c. recuperavit versus vos presentationem suam ad Vicariam de W. Præcipimus vob. quod ad presentationem ipsius præd. W. ad Vicariat prædictam idoneam personam admitt.* &c.

And if a Man have his Recovery against any other than the Bishop, then the Writ that shall be made unto the Bishop shall be in this wise:

Cum T. L. Miles recuperavit versus J. P. Presentationem suam, &c. Præcipimus vobis quod non obstante clamore præd. J. P. ad presentationem prædictam T. J. admitt. idoneam personam, &c.

Note,

Note, That upon this Writ he shall have an *Alias*, and a *plures*, if the Bishop do not execute the Writ, and an Attachment against the Bishop if need be.

Come we now to *Actions of Waste*, *Co. Lit. 54.*

THis Action lyes where Tenant for term of years, Tenant for term of life, Tenant for term of anothers life, Tenant in Dower, Tenant by the Curtesie of *England*, or Guardian in Chivalry, doth make Waste or Destruction upon the Land or Houses, that is to say, pulleth down the House, cutteth down Timber, or suffereth the House willingly to fall, or diggeth the ground, then he in the Reversion shall have a Writ for the waste, and shall recover the place where the waste was done, and treble damages against him that so committed waste. At the Common-Law waste was punished in three persons, Tenant in Dower, by the Curtesie and Guardian, There is also an Action of waste by Custom as in *London*.

And the remedy by the Common-Law was, 1. A Prohibition before waste done. 2. After waste done an Action of waste lay, which was also in the nature of a Prohibition, and the Writ of Prohibition had been sued. *Quia*, the Law is a Prohibition it self.

And upon a Recovery with Tenant in Dower, by the Curtesie, the punishment was two-fold, 1. Due to the value of the waste, and a Keeper appointed to withstand any waste.

The penalty of the Guardian was, 1. To lose the custody. 2. To yield the value in damages. 3. He should be Fined to the King.

And *per Stat. West. 2. cap. 14.* The Prohibition of waste upon which an Attachment did lye, is taken away, and in lieu thereof the Summons is given.

But if a man cut down Timber without license, and therewith repair old Houses, that is held no waste; but if he therewith build new Houses, then the cutting down of such Timber is waste also. *Vi. Co. Lit. 53.*

The cutting down of Under-wood, or Willows, which are no Timber, shall not be said to be waste; but where they grow in the sight and shadow of the House. *Co. Lit. 53.*

There are both negligent and voluntary wastes, and these are alike punishable, as where the Tenant or Lessee is bound

by Law to keep the House in good repair, as they were when he came to them.

In this case if he do not so, but suffer any part of it by his negligence to grow ruinous, this is waste, for which the Lessor may sue the Lessee.

Where there is no Timber upon the Lands to make repair, yet it is waste to suffer it to decay, for this, that the Tenant must procure Timber at his own charge. *Dyer. 216.*

It's waste where a man prostrates, abates, or breaks down any of the Housing, either the whole or part (that is) any of the principal Walls, or Walls of partition in Chambers, whether they be of Stone or Mud.

Where by a violent tempest, &c. the House comes to be uncover'd, it ought to be repair'd by the Tenant in convenient time, otherwise it is waste; So to suffer the House to be burnt by negligence, &c. is waste. *Co. lib. 4. 63.*

If the House be ruinous when the Tenant first comes into it, and he pull it down, and do not build it up again, this is waste.

Where a Man either takes away, pulls, or breaks down the Wainscoats, Doors, Windows, Benches, or any other things that are inseparable incidents of the House, being set up and fastned by the Lessor or Lessee, or other, is waste.

What is said to be waste in Trees or Woods.

Vid. Co. Lit.
53. Kitch.
pag. 332.

WHere there is Oak or Ash which are held Timber, in most Countreys, (and Elm in some Countreys where Timber is scarce) whether young or old, above or under twenty years of age, to sell this, or to employ it to build a new House, or a new Room, or any other purpose than to the repair of the old House, or Housing which are on the Land, or were at the time of the Lease, &c. in decay by age or tempest, is waste.

If a man sell Timber, although with an intent for reparations, and if he after sell it, or employ it to any other use, this is waste; and if after sale he buy it again, and then employ it for Reparations, yet this hath been held to be waste.

Where a man sells Timber for reparations, and so employs it, yet if it be done at such an unseasonable time, as that the Timber die in the Root, this is waste.

To

To cut down a Wood, and after to suffer cattel to crop it when it's newly felled, whereby it is killed, or to root and stub it up, this is waste.

To cut down Timber-Trees for fire-boot, hedg-boot, &c. where there is enough of other boot, this is waste.

To cut down such Trees for firing, as are fit for better use, being Timber, and only hollow, and dry at the top, is said to be waste. But if they be hollow, dry, and dead throughout, that they bear neither fruits nor leaves in Summer, if the Tenant cut down such Trees for fire-boot, it is no waste.

To cut down more for fire-boot, hedg-boot, and house-boot, (to keep it as he found it) then is necessary, or to cut down green wood when the e is sufficient dry, and dead wood, is waste.

To cut down fruit-Trees, Apple-trees, or Pear-trees, is waste if they be growing in a garden, although for reparation.

Such Fruit-trees, although half broken by the wind, or otherwise, if they do yet bear fruit, or the young springs of them, that may bear fruit, if the Tenant cut them down, or pull them up, it is waste.

Where a man ears up deep meadow, not plowed in mans memory, or grubs up road by the roads, and turns it into arable; or one the contrary, turns arable into wood, it is waste.

To open or dig new Quarries, for coal, stone, metal, gravel, lime, clay, or the like, this, unless there be special words in the Lease to warrant it, is waste, although it be not waste for a man to dig forward in a Myne that was opened before.

It is no waste to dig the Land for gravel, clay, &c. For necessary reparations, &c.

Having gone thus far in shewing what is waste, let the Attorney be well advised he bring not an Action of Waste, where the Lease or other writing, by which the Tenant holdeth or claimeth, have not that clause in it (without impeachment of waste) in which case the Lessee can do no waste &c.

For the unfolding of this clause, (*without impeachment of waste*) observe, that,

An impeachment of waste doth signifie a restraint from committing of waste, in Lands or Tenements &c.

And this word (*without*) added to impeachment of waste intimates a liberty to commit waste, and an Estate without any such restraint, *Vid. Co. lib. 1. c. 8.* this clause well expounded.

L

Those

Those and the like words inserted in the Deed, &c. are said to be annexed to the Estate, and they do change the quality of the Estate, and make the Tenant herein, in the nature of a Tenant in tail, and it adds that priviledg thereunto, that they give the Lessee a power and interest to make Waste, and to dispose the things to his own use; And here, if the Lessor bring an Action of Waste, the Tenant may barr him with this clause.

If it be not those very words, or the like sence, they are not good; for if the words be without impeachment of Waste, by any Writ of Waste, the words in this case are more tied up, and are not so large, they give not such a power to the Tenant, nor alter the property, they only discharge the Action; so that the Landlord can bring no Action against the Tenant for the waste done.

The words (*without impeachment of waste*) must be inserted in the same Deed, whereby the Estate is made, or another Deed made at the same time: For if he make his Lease without this clause, and after willerth that the Lessee shall hold without impeachment of waste; it is held, those words work nothing, either to discharge the Action, or give an interest.

If a man make a Lease for life, and by his Deed grant that if any waste be done, it shall be redressed by Neighbours, and not by suit or plea; yet an Action of waste will lie.

This priviledge gained by those words, where it is, may be lost; for it is annexed only to the privy of the Estate: And therefore if one that hath this privy annexed to his Estate, agree to change his Estate, the priviledge is gone; as where he that hath a Lease for years, with this clause in his Deed, accepts of a Deed of confirmation of his Estate without this clause.

The Processes incident to this Action, are,

1. A Summons, which is made by the Cursitor of the County, where the House or Land lies.

This Summons, if against a Tenant in Dower, is as follows:

REX, &c. Vic. L. salutem Si. A. fecerit te securum de clamore suo prosequend. tunc summonneas per bonos summonitores B. quæ fuit uxor. C. quod sit coram Justiciariis nostris apud Westm. Crast. Trin. ostensura quare fecit vultum venditionem, & destructionem de terris, domibus, boscis & gardinis quæ tenet in dotem de hereditate prad. A. in N. ad

ex hereditationem ipsius A. ut dicit. Et habeas ibid. summonitor &c.

Neither in this Writ, nor in a Writ of waste against a Guardian, a man shall not be tyed to rehearse the Statute which gives a Writ of waste, for that very reason, that they were actionable before that Statute.

If the Writ be against a Tenant for term of life, or of years, then it goes in this form:

REX &c. Vic. L. salutem, Si. A. fecerit, &c. tunc summonas, &c. B. quid sit coram, &c. ostensu us quare de communi concilio Regni nostri Angliæ provifum fit, quod non licet alicui vastum, venditionem seu destructionem facere de terris boscis & gardinis. Præd. B. de terris domibus & gardinis, M.N.

This Writ being returnable on the day of three weeks after St. Michael, the Defendant may, if he please, esloyn upon that Return; which if he do, then the Plaintiff may adjourn it unto the morrow after St. Martin; which if so, then the next Process is a *Pone*, which is to be made by the *Philizer* of the County, and may be made returnable in 8 days of Saint Hilary.

Upon the return of this *Pone*, and filing it with the *Philizer*, he maketh out a *Distingas*, which you may have returnable in 8 days of the Purification of the blessed Virgin Mary, as we shew'd before in the case of Partition, &c. Upon the *Distingas* if the Tenant doth not appear, you have Judgment by the Statute 2 W. cap. 14. And as I told you before in other Actions, in case the Defendant Esloyn not upon the *Summons*, he may upon the *Pone*.

Note, If the Lessee appear upon the *Distress* and plead, and make default, the Plaintiff shall not by the Statute, 2 W. cap. 14. have a Writ to enquire of the waste, because it is out of the words and purview of the Act.

In case the Defendant appear, and that you declare, your term is as follows, in case it be against Tenant for years.

Waste.

T *Rin. 10. Car. Regis Rotulo 1444. Ebor. ff. Willielmus M. Generosus. sum. suis ad respondend. Johanni. B. Armigero quare cum de communi Consilio Regni Dom Regis Anglia provis. sit quod non liceat alicui vastam, venditionem seu destructionem facere de terris, domibus, boscu, seu Gardinis sibi dimissis ad terminum vita vel Annorum sec. vastum, venditionem seu destructionem ad exheredat ipsius Johanni, & contra formam provisionis prad. &c. Et unde idem Johannes per R. C. Attorn. suum dic. quod cum ipse vicefimo octavo die Maij Anno Regni Dom. Regis nunc quint. apud R. dimississet prafat. Willielmo unum Mes. annum clausum pa'ura, le W. Lease, alias W. Lease continen per estimationem Centum Triginta acras, unum alium Clausum pastura cum pertin. voc le Sc. continen. per estimationem viginti & duas acras, & unum alium clausum pastura voc Sc. continen per estimationem 17. acras cum pertin. in R. prad. Habend. & occupand sibi & assignatis suis a festo annunt beata Mar. Virginis tunc ult. preterit usque finem & terminum trium annor. extunc prox. sequen. plenar. complend & finiend. virtute cujus dimissionis pradict Willielmus in Tenementa prad. cum pertin. intravit & inde fuit possessionat. ipsoq; Willielmo sic inde possessionat. exi. en. venditione inde eidem Johanni & heredibus suis spectan. pradictum Willielmus fecit vastum, venditionem & destructionem de domibus videlicet permittend. unum Aulam pretii 10 l. & unam Cameram pret. 10 l. parcel. Messuagii pradicti superius dimiss. stare & esse discopers. per quod grossum Maremium earundem Aula & Camera per tempestates pluviales super ill. discenden. putrid. deven. & corrupt & aula & Camera ill. ratione corruptionis illius ruinam minant. de boscu videt. in dividendo in quodam Clauso vocat Belbridge Spring continen per estimationem sex acras existen. parcel. pradicti Clausi voc. le W. L. alias W. L. parcel. tenementorum pradictorum superius dimissor. Cent ferrapinos pretii cujuslibet earum quadraginta solidorum & Centum quercus cujuslibet earum viginti solidorum in eisdem sex acris sparsim nuper crescen. & Maremium inde ca iend. & vendend decapitando etiam cent. quercus pretii cujuslibet earum viginti solidorum in predictis sex acris sparsim nuper crescen & lignum inde provenien. capiend. & vendend. de terris etiam videt. in fodendo in predicto clauso voc. Belbridge Spring ducent. caretas lapidum vocat. slate-stones pretii cujuslibet caretas. inde 5 s. & lapides predictos capiend.*

Et vendend. de gardinis etiam permittend duodecim perticat. muri Anglice a Mud-Wall cum Maremio veteri Stamine cooperi pretii cuiuslibet perticat. inde viginti solidorum, gardinum parcell. tenementorum predictorum cum pertin. nuper includem fore prostrat. ad exhereditationem ipsius Johannis Et contra formam provisionis predicti. Et unde dic. Et damn. lx l Et inde produc. sectam. Et.

Et predictus M. per J. H. Attornat. suum ven Et defend. vim Et injur. quando Et. Et quicquid Et. Et ceteris quod ipse null. fecit vastum, venditionem seu destructionem in tenementis predictis cum pertin prout predictus J. per breve Et narrationem suam predictam superius supponit Et de hoc pon se super patriam. Et praed. M. sim. l. Ideo praecipit. est vic. quod venis fac. h. c. in octabis Pur. 12. Et.

In case the Tenant for life hath let the same to a Tenant for years, then the Tenant for years may pray to defend the Action as followeth.

§. xv. **E**T modo ad hunc diem ven. tam praed. W. B. per Paschas. Attorn suum praed. quam quidam W. H. gen. modo tenens tenementorum praed. cum pertin. ad terminum diversorum annorum ad tunc venturum per Rogerrum Smith Attorn. suum Et dic. quod ante diem imperatoris brevis originalis praed. W. B. & ante aliquod vastum venditionem seu destructionem superius fieri supposit. praed. Ursula M. vid. fuit seista de tenementis praedicti. cum pertin. in domitico suo, ut de libero tenemento pro termino vitae suae. Et sic inde seista existens ante vastum praed. superius fieri supposit. scil. vicesimo primo die Feb. Anno Regni Dom. Regis nunc tertio apud G. praed. per quandam Indentur. suam inter eand Ursulam ex una parte & ipsum Walterum ex altera parte factam cujus alteram partem, sigillo praed. Ursulae signat. idem Walterus hic in Cur. profert cujus dat. est eisdem die & anno dimisisset eidem Waltero tenementa praed. cum pertin. Habend. & occupand sibi & assign. suis a festo n. nunciacionis beatae Marie Virginis tunc prox. sequend usque finem & terminum trium annorum extunc prox. sequend. & plenarie complend. si praedicta Ursula tamdiu viveret. Et si praed. Walterus Hill Executores, Administratores. vel Assign. sui vel eorum aliquis proposu. vel determinat. forent ad habend tenend. & gaudend praed. tenementa cum pertin pro ali-

quo longiore tempore vel termino annorum quam pro præd. termino trium annorum & ad aliquod tempus ante Festum S. Michaelis Arch. qui tunc foret. in anno Dom. millesimo sexcentesimo tricesimo secundum computaion. Ecclesiæ Anglicanæ darent sive relinquerent notitiam in scriptis de ejus seu eorum proposito intentione sive determinatione ad vel in tunc domum mantional E. H. mil scituat. & existen. in M. in Com. C. tunc habend. & tenend. præd. tenementa cum pertin. præfat. W. H. Executor. Admin. & Assign. suis imediate ab & post expirationem præd. termini Trium annor. superius mentionat u'que finem & termin sexaginta annorum ex tunc prox. sequen. plenar. complend. & finend si præd. Ursul. tam diu viveret. Virtute cujus dimissionis idem Walterus in crastino præd. Festi Annunciationis beatæ Mariæ prox. post confessionem indentur. præd. in tenementa præd. cum pertin. intravit & fuit inde possessionat. pro præd. termin trium annor. in eadem Indentura superius mentionat Ipsosq; Waltero sic inde possessionat. idem Walterus postea & ante præd. Festum Sancti. Mich. Arch. qui fuit in anno Dom. millesimo sexcentesimo tricesimo supradicto scil. xxvij. die Septemb. Anno Dom millesimo sexcentesimo tricesimo supradicto apud M. præd. apud præd domum mantionalem præd. E. H. Militis ibidem dedit & reliquit notitiam in scriptis quod ipse proposuit. & determinat. fuit ad habend. tenend. & gaudent. præd. tenementa cum pertin. pro longiore tempore & termino annorum, quam pro prædicto termino trium annorum in Indentur præd. superius mentionat. secundum formam & effect. Indentur. illius P. quod idem Walterus fuit de præd. interesse præd. termini sexaginta annorum incipiend. post finem & determination præd. termin. trium annorum possessionat. Ipsosq; Waltero sic inde possessionat. existen. præd. terminus trium annorum postea scil. ad Fest. Annunciationis beatæ Mariæ Virginis Anno Regni Dom. Regis nunc sexto finivit & determinavit per quod idem Walterus fuit & adhuc est de tenementis præd. cum pertin. pro præd termino sexaginta annorum si præd. Ursula tam diu vixit possessionat Et idem Walterus dic. quod præd breve de vasto præd. in forma prædicta impetrat. habit & impetrat. fuit per fraudem & covinam inter præd Ursulam & præfat. W. B. inter eos apud G. præd. prius habit & separales default. præd super separabilibus prædictis in forma prædicta per præd. Ursul. voluntar

fact.

fact. fuer. ad decipiend. eund. Walt. H. de termino annorum præd. de & in tenementis præd. adhuc ventur. Et idem Walt. per quod i. sum pro default. Ursula in forma præd. fact. recipiat. & admittat. ad defensionem juris sui & termin. suum annorum præd. de & in tenementis prædictis adhuc ventur. Eo quod ead tenement. sunt jus suum præd. termino lx annor. si præd. Ursula tamdiu vixit, & pro eo quod idem Walter. ven. ante in præd. placito reddit parat. præfat. W. B. in loquela præd. respondere & jus suum præd. pro prædict. termino lx annor. si præd. Ursula tamdiu vixit defendere &c. Et admittatur &c. super quo præd. W. B. narrando &c.

Thus you have a Declaration in waste, and a Plea pleaded to it, and Issue joyned, and this is against Tenant for term of years: now the Declarations in this Action vary, as to the several persons that bring the Action, and the several persons against whom it is brought.

As where it is brought by the Heir in tail, against Tenant for life.

Where it is against Tenant in Dower, as before you saw in the Summons.

Also where the purchase of the Reversion brings it against Tenant for years.

Also it may be brought after a Fine levied, in all which Cases, the Declaration must vary, according to the Cause, in all which Cases, as also in divers other proceedings of other natures, I refer you to a Book printed, intituled, *Declarations and Pleadings in English*, Collected by Richard Brownlow Esquire, which would swell this small Tract beyond its intended bigness.

Now, as the Declarations are various, so are the Pleas, incident to them; for they may be either general or special.

The general Plea is, no waste made, &c.

The special Pleas are many, either in way of justification, or excuse, as the case is.

It is a good Plea, if the waste be laid, to be in not repairing, &c. That it was repaired before the Action brought, and this must be pleaded specially.

But to plead it was repaired after the Action brought, it is no good Plea.

It is a good Plea to any waste, that the Lessor gave authority to do it.

It is no good Plea to say, that the Plaintiff did covenant to deliver timber from off the Land, to do it, and refused, for the Defendant in this case may take it.

It is a good Plea to say, The House or Trees were burnt or spoiled by fire, water, or wind, or that the ruine of them, was caused by some extraordinary act of God.

It is a good Plea to say, That the House fell before the Lease; or that it was so extraordinary ruinous, and the Timber so rotten, as that it would not bear repairing.

It is a good Plea to say: That the Lease is surrendered to the Lessor, and he hath accepted it.

It is a good Plea, That the Plaintiff hath entred upon the Land, and before such his entry, there was no waste committed.

It is a good Plea, To Plead that the Plaintiff hath granted away his Estate, and before the grant there was no waste committed.

If the Plaintiff by good words do effectually release the waste, this is a good Plea.

Where the Lease was made without impeachment of waste, it is a good Plea on the part of the Defendant.

It is no good Plea, in this Action for cutting down Timber, or pulling down the house, that the Lessor took away the Timber or materials, &c.

It is no Plea, That the Lessor hath a Covenant from the Lessee, not to do waste.

It is no good Plea for the Tenant in an Action of waste for cutting of Timber, to say, that he cut it, and keeps it till there shall be need; nor to say, he cut it generally for necessary reparations, unless he say withall, that he employed it to that purpose.

And yet it were but reason, it should be justified to cut it a little before it be used, for the drying of it, and making of it otherwise useful, when an occasion of use is apparant at hand.

It is a good Plea for the defendant to say, That he cut it to make posts for inclosures, if he can withall prescribe that there have been alwayes such inclosures there.

But these, and many other may now at th^e Election of the Defendant be omitted and by the late Act of 22 Octob. 1650. he may plead not guilty, or some such other general Issue may be

be pleaded, and the special matter may be given in evidence.

Upon these, or any other Issue joyned, and that you intend to go to tryall, the directions that were given before in Partition, Dower, &c. will guide you, both for the making your *Venire facias*, *Habeas corpora*, and Record; and likewise for your Tryal, and Return of your *posse*, and entring of Judgement.

In this Action, as before you have heard your Judgement is, that the Plaintiff shall recover the place wasted, and his treble damages.

In case the Defendant pleads not, but lets it go by default, or confesseth the Action, when a Writ of inquiry is awarded, and upon that the Sheriff is to inquire by the oath of twelve Jurors, what damages the Plaintiff hath sustained, which he returns in an inquisition, and then the party hath Judgement to recover the treble of it; and then hath he as in a Verdict after Judgement entred, a Writ of Seisin awarded, which is directed to the Sheriff of the County, where the house or land lies, to give possession to the Plaintiff of the place or places wasted, &c.

Warrantia Charta comes next to be treated of.

THis Writ lies where one is infeoffed of Lands with Warranty, or where one releaseth to a man in possession, or confirmeth to one in possession with Warranty, and then he is impleaded, or fears to be impleaded. *Vid.* N.B. 156.

Where *Dedi* is contained in a Deed, (though there be no express Warranty, the Feoffee is bound to Warranty during his life, but at this day upon one gift in tail by the word *Dedi*, the Donor and his Heirs are bound to Warranty; and so it is of a Lease for life, resuming a Rent, though it be *Sans Fait*. 2 *Inst.* 275.

The process in this Action are Summons in the first place, which is as follows.

The Summons in Warrantia Charta.

REX &c Precipe T. L. militi quod iuste &c. Warrantizet T. B. unum messuagium, triginta acras prati & viginti

viginti acras pasturæ cum pertin. in L. quas tenet & de eo tenere clamat & unde Cartam suam habet ut dicit. Et nisi fecerit. & prædictus T. B. fecerit te secur. de clamore suo prosequend tunc summon. per bonos summonit. præd. T. C. quod sit coram Justiciariis nostris apud Westm. in Crast. animarum. ostensus quare non fecerit. Et habeas ibi summ. & hoc breve T. &c.

Warrantia Charta is either provisional or remedial for damage sustained, or *quia timet*.

The Process is a Summons, Attachment, and Distress infinite before appearance, and if he appeare, and after make default, a grand Distress doth issue in lieu of a *Petit Cape*.

And although this Writ supposeth that he holdeth of the Defendant; yet is it not material whether he holdeth of him or no.

And also if the Plaintiff hold by Homage *Anceffrel* of the Defendant any land, and is impleaded, and hath not any Deed of it, yet he shall have this Writ of *Warrantia Charta* against the Defendant, and the Writ will say, (whereof he hath his Deed) and yet he hath not the Deed to shew, but only holdeth by *Homage Anceffrel*, which implies a Warranty, and for this in this case, these words (whereof he hath his Deed) is not material.

If a man Lease Land for term of life, rendring a certain rent or make a gift in tail, rendring Rent without Deed, and after the Lessee or Donee is impleaded, in such Action where he cannot vouch, then he shall have this Writ of *Warrantia Charta*, against the Lessor, or Donor, or his Heir, who hath the Reversion; for this Reversion and Rent reserved, makes a Warranty in Law, by the Statute of *Bigamis* the last Chapter, although he had not any Deed of it, 2 *Inst.* 175.

For all the parts of a Warrantia Charta, see Osborns Case in Hobbart.

If a man give Land to another in Fee, by Deed, by these words, (I have given and granted, &c.) In this Case, he shall be held to Warranty of this land, to the Feoffee by these words, and if the Feoffee be impleaded he shall have a Writ of *Warrantia Charta* against the Feoffor by these words, (I have given and granted, &c.) but not against his Heir; for the Heir shall not be bound unto Warranty by the Deed of his Father, unless he oblige himself and his Heirs to Warranty, &c. by express

press words in the Deed, as to say, I and my Heirs, all the afore-
said Lands will warrant, 2 Inst. &c. 275.

Note, that he shall not have this Action of *Warrantia Charta* against the Feoffers, or against him against whom he hath Warranty, if he be impleaded in any Action wherein he may vouch him; for then he ought to vouch him to Warranty, and if he will not vouch him in the Action, he shall not afterwards have a writ of *Warrantia Charta*.

Note, that the vouchee is either to defend the Right against the Defendant, or to yield him other Lands &c. in value, and extendeth to Lands, &c. of an Estate of Free-hold or inheritance, and not to any Chattel, real, personal, or mixt, saving, onely in case of a Wardship granted with Warranty; for in the other cases, concerning Chattels, &c. the voucher shall have an Action of Covenant, if he hath a Deed: And an Action of the case, or an Action of deceit, if it be by word of mouth.

The Process whereby the Vouchee is called, is a Summons *Ad Warrantizandum*, and whereupon, if the Sheriff return that the Vouchee is summoned, and he maketh default, then there is awarded a *Magnum cape ad valentiam*, &c. When, if he make default again, then judgment is given against the Tenant, and he to have over in value against the Vouchee; but if the Sheriff return that he hath nothing, then after a Writ of *Alias* and *Plures*, a Writ of *Sequitur sub periculo suo* is awarded, &c. And in such case, the Demandant shall not have Judgment to recover in value, &c. because the Vouchee was never warned.

This is intended of a Voucher in any real Action.

Vid. Co. Lit. 101. b. This Case at large.

In the Case of Homage *Ancestral*, which is a special Warranty in Law, the Lands that the Lord hath generally at the time of the Voucher, shall be liable to Execution in value, where he hath them by descent or purchase: But in the case of an express Warranty, the Heir shall be charged but only for such Lands as he had by descent from the Ancestor, which creates the Warranty.

Note, the Lands of the Vouchee shall be lyable to warranty, that the Vouchee hath at the time of the Voucher, for that the Voucher is in lieu of an Action, and in *Warrantia Charta*, the

the land which the Defendant hath at the time of the Writ brought, shall be liable to the warranty.

If a man give Lands in Fee with warranty, and binds certain Lands especial to warranty, the person of the Feoffor is hereby bound, and not the Land, unless he had it at the time of the Voucher.

A man may bring his Writ of Warranty of Charters, &c. in what County he will, if the Deed bear not date at a certain place of the County, for then he ought to bring the Writ where the Deed bears date.

But if a man bring a Writ of *Warrantia Charta*, by reason of Homage *Ancestral*, &c. Then he ought to bring the Writ in the County where the Land lyes.

The Summons in this Writ we have shewed you before, upon which Writ, as in the case of Waste, the Defendant may Effoin, and the Plaintiff adjourn; and for want of an adjournment of the Plaintiff, the Defendant may enter a Non-suit against the Plaintiff, provided there were a *N: recipiasur* first entred with the Clerk of the Effoins, upon the day of Exception; and then in that Case the Plaintiff is put to begin again.

After the Summons, comes the *Pone*, and then a *Disfringas*, and if the Defendant appear not, an *Alias disfringas* setting Issues, &c. And so distresses in *Infinisum*, till there be appearance given.

In case the Defendant do appear, then you may declare as in the form following.

The Declaration in Warrantia Charta

Lincoln ss.

T. L. Mil. summ. fuit ad respondend T. B. de placito quod Warrantizet cum unum Meluagium & triginta acr. prati cum pertin. in L. quas tenet & de eo tenere clamat, de unde chartam suam habet, &c. Et unde idem T. B. per W. S. Attornat. suum. dic. quod cum prædictus T. L. fuisset seifit. de tenementis prædictis cum pertin in. Dominico suo ut de feodo, & sic inde seifit existen. Nono die Octobris Anno Regni Dom. Regis nunc xxj. apud L. per quandam Chartam suam, quam idem T. B. sigillo prædicti T. L. signat. hic in Cur. profert cujus dat. est eisdem die & Anno dedisset & concessisset ei idem

eisdem T. B. hered. & assignat. suis tenementa præd. cum pertin. habend. & tenend. tenementa præd. cum pertin. eisdem T. B. & hered. suis in perpetuum. Et per eandem Chartam prædictus T. L. obligasset se & heredes suos ad Warrantizand. tenementa præd. cum pertin. eidem, T. B. & hered. suis contra ipsum T. L. Et heredes suos & contra omnes alias personas claman. per vel subter ipsum vel ipsos vel per aut subter T. L. Militem tunc defunct. patrem. prædict. T. L. modo defend. & dominam Mariam L. tunc similiter defunct. matrem prædict. T. L. modo defend. prout per eand. Chartam plenius apparet Quorum quidem doni & concessionis prætextu idem T. B. fuit seifit. de tenementis prædict. cum pertin. in dominico suo ut de feodo, ipsoque T. B. sic inde seifit. existen. quidam F. F. gen. clamans per & subtr. prædictum T. L. modo defend. aramavit versus ipsum T. B. quandam assisam novæ diffinitione de tenementis prædictis cum pertin. coram O. B. Milit. & Baronet. un. Justiciar. dict. Dom. Regis de Banco hic & R. B. Milit. altero Justic. ejusdem Dom. Regis de Banco hic Justic. ipsius Dom. Regis ad assisas in Com. præd. capiend. assignat. qua quidem assisa pendend. idem, T. B. requisivit præfat. T. L. quod ipse prædicta tenementa cum pertin. eidem T. B. Warrantizaret sed prædict. T. L. præd. tenementa cum pertin. eidem T. B. huculque Warrantizare contradixit & adhuc contradicit unde dicit, quod deteriorat. est & dampn. habet ad valentiam quingentarum librarum, & inde producit sententiam &c.

Et prædictus T. L. modo defend. per W. W. Attorn. suum. ven. & defend. vim & injur. quando &c. Et dicit quod non potest dedicere quin Charta prædicta sit factum ipsius T. L. modo defend. nec quin ipse per Chartam illam dederit & concesserit tenementa præd. cum pertin. eidem, T. B. in forma qua idem T. B. superius versus cum narravit. Ideo consideret quod præd. T. L. Warr. præfato T. B. tenementa prædicta cum pertin. pro loco & tempore &c. Et nihil de mis. vers. præd. T. L. quia ven. primo die per summ. &c.

Here you have a Declaration and a Judgment by confession.

Note

NOte if a man recover his Warranty in *Warrantia Charta* and after he is impleaded in an Action in which he cannot vouch, as by assise, or by *Scire facias* upon a Fine, now it seems that he ought to give notice to him against whom he had recovered his Warranty of his Action; and to pray him to shew what plea he will plead to defend the land.

NOte, that a man may bring a Writ of *Warrantia Charta* at the Common Law for Warranty made of lands holden in ancient Demefne.

Having gone through Warrantia Charta, we come now to Audita Querela.

What the Writ is.

A*udita Querela* is a Writ, and lyeth where one is bound in a Statute Merchant, Statute Staple, or Recognizance, or where Judgment is given against him for Debt, and his body in Execution thereupon, then if he have a release, or other matter sufficient to be discharged of execution, and hath no day in Court there to plead it, then he shall have this Writ against him that hath so recovered, or against his Executors.

Against whom, and for whom this Writ is brought.

THis Writ lyeth for the party himself against whom the Judgment is had, by whom the Statute is made, or his Heir, Executor, or Administrator, upon whom the charge is come or coming. Sometimes it is to be had against the Prosecutor himself, and sometimes against him and others that ought to bear a part of the burthen with him.

It lyes against a *Terr-Tenant*, without naming him Party or Privy.

Wheresoever this remedy is given, there must be these three things in the case.

1. There must be a charge or burthen come, or coming upon him that is to have it.
2. It must be such a charge, &c. as by law he ought to be discharged of, in part or in whole.
3. It is such a case as where he hath no other remedy for his relief.

These following cases will clear these particulars.

If

If a Judgment or Judgments and Execution be had against one, and the Plaintiff release him of the debt in fact, or that he be released of it all, or of part of it in law, and yet he sueth out Execution.

If a Judgment be had against me and another, and one of us be taken in Execution, and after are released of the debt, or discharged of the Execution by the party himself, the other may take advantage of this.

If Judgment be against two Trespasors, and one taken, and the damages satisfied by him.

The like case if a Judgment be against two or more, upon one Bond, and Execution is done upon, and satisfaction made by one of them.

If Executors sue for, and recover a debt, and after the Testament is revoked, in this case, the party that hath paid the money, may get the same certified by the Bishop, and then he shall have his remedy against the Executors.

If the Conusor after Execution tender the mony due upon the Statute to the Conusee, and he refuse it, or if part of it were paid at the day, and he tender the rest in Court and yet the Conusee go on to extend, in these Cases, the party grieved may have this remedy.

If the Statute were delivered to a stranger to keep till certain conditions were performed, and he doth deliver it to the Conusee; or he doth get it by fraud from him, before the conditions be performed, in this case he shall be relieved by this Writ.

If an Infant enter into a Statute, he may avoid it whilst he is in his minority, by this Writ, and the course is this: In case he be in Prison, this Writ may be sued out by some of his friends, from the Justices, who thereupon command the Sheriff to bring the Infant into Court to be seen; and if the Judges judg him to be within age, after process sent to the Conusee, they will discharge him. But if one that hath been an infant, be sued upon it, after he is of full age, this Writ doth not lye for him.

If divers be bound by one specialty [*Conjunctim & Divisim*] and the Obligee get Judgment and Execution against one of them, and after sue the specialty against the other, he shall not have this Writ for his relief, but may plead the former Execution.

If

If in the interim betwixt Verdict and Judgment, the parties have put themselves unto Arbitrement for the suit, or the Defendant get a release from the Plaintiff and yet the Plaintiff doth proceed, the Defendant may have this Action; but where these cases are put, its to be conceived before the Writ brought, that Judgment is given.

Where a man sues for a thing for which he had formerly Judgment and Execution, here this Writ lyes not, for it is pleadable.

Where a man and his Heirs are bound by any bond or bill, &c. and the obligee sue it, and recover against the Heir, and after sue the Executors for the same cause; or on the other side after recovery had against the Executors, he sue the Heir, here the Heir or Executor so sued, may have this remedy, for that he cannot plead it in bar.

Where a Lessee Covenants for him and his Assigns to repair houses, or to do any other thing chargeable upon him after assignment of his Estate, and he assign his Estate, and after the Lessor, who may sue either of them, sue and recover against one of them; in this case, if after he sue the other for the same cause, he may have this remedy.

The Proceedings in this Action are as follow.

Where before Execution this Writ is brought by the party grieved himself, or by his Heirs, or Executors, he surmising good cause of this Writ, must give good Bail to prosecute, and stand to the Judgment of the Court, upon which he may have a *Superfedeas* to stay Execution; but when the party is in Prison, then it seems there is no bail put in, till the Conusee or Obligee answer in the *Audita Querela*. Note, the Proceſs before execution, are *Venire facias*, *Disfringas*, and if he come not to appear upon the *Disfringas*, then Execution, unless the Sheriff return a *Nihil habet* upon the *Venire*, if so, then shall issue a *Disfringas Alias*, and *Plures*, and upon a *Nihil* returned on these Proceſs, then a *Capias* shall issue.

Note, That after execution executed, no *Superfedeas* doth lye, after Execution a *Scire facias* doth issue, and this peremptory.

The Proceſs before Execution are a *Venire facias* and an *Alias*, &c. and then if he comes not in, the use hath been, that upon motion, the party in Prison may be discharged.

After

After those Proceſs, a *Diſtringas*; and upon default after appearance, and a Plea pleaded, a *Diſtringas ad audiendum judicium*; for by ſuch default, Judgment ſhall be given againſt him, and after Execution, the Proceſs is a *Scire facias*, when the Party is in Priſon upon a *Capias ad ſatisfaciendum*

Where a man puts in Bail in this Action, he ſhall not be diſcharged of this Bail, but muſt continue till the Suit by *Audita Querela* be determined; for albeit the Party do not proſecute after the appearance of the Defendant, yet he muſt continue in Priſon, or ſtand upon his Bail.

If a man be Non-ſuited in one *Audita Querela*, yet he may have another; but he ſhall have no *Superſedens* in the ſecond, as he had in the firſt.

Audita Querela upon the Statute of Uſury.

REX Juſtic. ſuis de Banco ſalutem. Ex gravi Querela J. accepimus, quod cum idem J. nuper coram J. tunc Magiſtre Villæ Briſtol & J. tunc clerico ad recognitiones debitorum apud B. accipiend. Deputatis recognoviſſet ſe debere A. 100 l. ad certos terminos in recognitione præd. contentos ſolvend. ac idem A. poſtmòdò per quandam Indenturam inter ipſos A. & L. conſectam conceſſiſſet quod ſi præfat. J. ſolverit præfat. A. ſingulis annis ad quatuor anni terminos per equales portiones quandam redditum lx s. exeunt. de terris & tenementis prædict. J. aut R. de K. fratris ejusdem J. in Villa & Suburbio Briſtol ad totam vitam ipſius A. extunc dicta recog. de 100 l. penitus ceſſaretur & pro nulla haberetur prout per alteram partem Indentur. præd. ſigillo præd. A. ſigillat. quam idem J. penes ſe habet ut aſſerit plenius poterit apparere, Et licet præd. J. dict. reddit lx s. præfat. A ſingulis annis ad terminos prædictos æquis portionib. a tempore conſectionis recogn. præd. uſque ad Feſtum Paſchæ & termino &c. Bene & fideliter ſolverit & eund. reddit. eidem A. ſemper haſtenus a Feſto præd. ad eoſd. terminos ſolvere paratus fuerit & adhuc exiſtit prout viis & modis quibus convenit paratus eſt edocere: idem tamen A. Executor dictarum Cl. de terris & tenement. ipſius J. preſectu recogn. præd. proſequitur minus juſte in ipſius J. diſpendium non modicum & gravamen & contra vim & effectum Indentur. ſupradict. ſuper quo &c. Et quia eidem J. injuriari nolumus in hac parte, vobis mandamus quod viſa altera parte Indentur. prædict. & vocat. coram vobis partibus

M

prædictis

prædictis auditisq; hinc & inde earum rationibus alterius in hac parte fieri fac. quod. de jure & secund legem & consuetud. regni nostri fuer. faciend. T. &c.

Rex. Justic. de Banco salutem. Ex parte J. de B. nobis est graviter conquerendo monstratum ut cum ipse coram Adam de Bury nuper Majore Civitat. nostr. London & Will de Merston Clerico ad recognition. debitor. in eadem Civitat. accipiend. deputatis recognovisset sedebere R. de K. ducentas marcas quas ei soluisse debuisset ad certum terminum in recognition. contentum. Et licet prædictus R. per scriptum suum omni mod. actiones reales & personales quas erga præd J. ratione cujuscunq; transgressionis, computi seu debiti. habuit eid. J. remisisset & relaxasset prout per scriptum præd. quod idem J. penes se habet, ut asserit, plenius poterit apparere idem tamen R. ad scriptum præd. considerationem non habens, executionem de debito præd. in Curia nostra coram vobis virtute statui prædict. versus præfat. J. prosequitur & ipsum J. actione capi & in Prisona nostra detineri procuravit in qua adhuc detentus existit. in ipsius J. damnum non modicum & gravamen & vitæ suæ periculum manifestum ac contra formam statui præd. & nobis est supplicatum sibi per nos remedium adhiberi. Nos quod justum fuerit fieri volentes, Vobis mandamus quod audita querela ipsius J. in hac parte vocatisq; coram vobis partibus prædictis auditisq; hinc & inde earum rationibus ac inspecto scripto prædicto eidem J. Festivum Justitiæ complementum fieri faciatis prout de jure & secund legem & consuetudinem regni nostri Angl. fuerit faciend. T. M. ipso &c.

NOte, That if a man enter into a Statute or Recognizance, which either is defective in it self, or is voidable by some Law, or because the Contract is usurious; or that there be a defeazance upon it, which is kept from the Conusor, or that the Statute is delivered up by the Conusee, (which is a release in law) and the Conusor get it again, and the Conusee doth go on in the execution of it. In all these cases, the party grieved may have this remedy and Writ for his relief.

If the Statute were made through hard Imprisonment of the Conusor, he may have this Writ, &c.

Note,

NOte, J.W. brought an *Audita Querela*, upon the Statute of Usury to be relieved in making void a Judgment given upon a Bond where he hath pleaded, that it was his deed, and it was disallowed, and Judgment thereupon as followeth :

ET super hoc præmissis prædict. visis & per Justiciarios hic plenius intellect. videtur Justiciariis hic quod prædictum breve de Audita Querela matteiraq; in eadem content. minus lu Ficiens in lege fuit præd. R. executionem. præd. habend. Ideo considerat. est quod præd. J. W. nil capiat, per breve suum de Audita querela. Et quod præd. R. prolecur. pro executione, Si &c.

If a man sue an *Audita Querela* upon a Release, and afterwards he is Non-suit, he shall not have an *Audita Querela* upon new matter, and yet the Law seems contrary to this, where it sayes, he shall not delay execution upon a new *Audita Querela*.

If the Consulor after execution tender the money due upon the Statute to the Consuee, and he refuse it, or if part of it were paid at a day, and he tender the rest in Court, and yet the Consuee go on to extend it, in these cases the Party grieved may have this remedy.

The Process as we told you in *Audita Querela*, were *Venire facias*, *Distingas*, *Alias*, and *Plures*; only take this further, That if the Sheriff return that he hath nothing, &c. Or, * that he cannot be found, &c. Then he shall have a *Capias* against the Defendant.

* This *Capias* is to be understood where the Sheriff returns a *Nichil* upon

Curia Claudenda. This is a Writ which lies at Common Law, and is for reparation of Fences, Hedges, Mounds, &c.

the *Distingas*, *Alias*, and *Plures*

THIS Writ lies where a man ought to inclose his Soil or Land from his Neighbours, and will not do this, then he may have this Writ, and it may be sued before the Sheriff in the County Court, or in the Court of Common Pleas. If the Writ be before the Sheriff, then it runs thus :

M 2

Note,

Breve de Curia de Clauden in Com.

REX &c. Vic. E salutem. Justices A. quod juste &c. Claudat Curiam suam in N. quæ aperta est ad nocumentum liberi tenementi B. in eadem villa (vel in alia) quam claudere debet ut solet ut dicit sicut rationabiliter monstrare poterit quod eam claudere debet, ne amplius unde clamorem audiamus pro defectu recti &c.

De eodem ad Baucum.

Pr. A. quod juste &c. claudat Curiam suam in N. quæ aperta est ad nocumentum liberi tenementi &c. usq; ibi debet & solet ut dicit. Et in se &c.

This Writ may be removed out of the County, at the Suit of the Plaintiff, without cause.

But if the Defendant will remove it, he ought to shew cause in the Writ.

And in the Writ to remove it by the Defendant, shall be this clause, (*Let execution of this Writ be made, &c. if the cause be true, otherwise not.*)

This Writ lies not, unless against him who hath the Close next adjoining unto the Land of the Plaintiff, and lies not, unless for him who hath an Estate of Free-hold in the Land, for Tenant for term of years shall not have this Writ. *F.N.B.* 128.

If a man have a Common in a great Waste, to him and his Heirs, or for Term of life, and he who hath the Land adjoining to his Waste, who ought to enclose betwixt the Waste and his Land, will not make his Inclosure, yet the Commoner shall not have this Action for the Damage that he hath sustained, &c. Although the Commoner may distrain the Beasts Damage-feasant to the Land, which is his Common. For the Writ supposes to the Nocument of the Free-hold of the Plaintiff, which proveth that the Plaintiff ought to have the Land adjoining, if he will have this Action. *Vide F.N.B.* 127, 128.

The Process in this Action is Summons, Attachment, and Distress, &c.

The View lies in this Writ.

If the Defendant appear, and afterwards make default, he shall have a *Distringas* in lieu of a *Petit Cape*, &c. and if he make

make default at the day of the Return of this Writ, he shall have a Writ to inquire of Damages, and also a Writ to distrain to the Reparation.

If the Party appear, and that you come to declare, take these Observations :

IN your Declaration you ought to shew the certainty of the Land which the Plaintiff hath there adjoining unto the Defendants Land, and the certainty of the Land which the Defendant hath there adjoining, who ought to inclose, and then you ought to alledge Prescription to inclose.

Parco Fracto, or Breaking the Pound, comes next to be handled.

THis Writ lies, where a man distrains the Beasts of another man doing hurt, or for Rent or Services behind, and sends them into the common Pound or place, which may be called a lawful Pound : and he which hath the property of the Beasts, or another Person, take the Beasts out of the Pound, and driveth them to a place where he pleaseth; In this case, he that distrains for damage done unto him, or for Rent or Services behind, may have this Writ; wherein he shall have Judgment to recover Damages for it, and to distrain the Cattel again wheresoever he shall find them. *F. N. B. 107.*

For this cause also is the Party offending punishable in a Court-Leet.

If a man command his Servant to distrain for Rent or Services arrear, and the Servant distrain the Beasts, and put them in Pound, &c. and a stranger take them out of the Pound; in this case the Master, and not the Servant, shall have an Action of *Parco Fracto*, for it is the Pound of the Master. *F. N. B. 100.*

If a man distrain for Rent or Services, or for Damage-feasant, and put the Beasts in the Soil. or in the Close of his Friends by his License, and he which owes the Beasts take them out of the Close; here he which distrains shall have this Action, and not he who owed the Close; for he which owed the Close may have his Action: Wherefore he brake his Close, &c. For it is not his Pound, but the Pound of him that distraineth, &c. The form of the Writ is thus :

M 3

REX

REX &c. Vic. L. salutem. Si A. &c. tunc pone &c. Ostensurus quare cum idem A. in dampno suo apud N. quædam Averia (vel sic) Averia prædictorum B. & C cepisset & ea secundum legem & consuetud. regni nostri ibidem imparcasset iidem B. C. Parcum illum vi & armis fregerunt & Averia prædict. ceperunt & ea inde asport. Et alia enormia &c. Ad grave damnum &c.

Note here, this Writ is by force and arms, and it is not put in the Writ what manner of Beasts they were, nor what number, nor to whom the property of the Beasts are, unless at the pleasure of the Plaintiff.

Where a man commands his seryant to distrain for Rent or Services, or for Damage-feasant, then the Writ is thus :

Ostensurus quare cum idem A. in damno suo apud N. per C. seryientem suum quendam bovem vel quædam Averia capi fecisset & idem C. bovem illum (vel sic) Averia illa secundum legem & consuetud. Regni nostri imparcasset prædictus B. parcum illum vi & armis fregit & asportavit (vel sic) Averia illa usq; N. duxisset & ea ibidem secundum legem & consuetudinem, regni nostri &c. prædictus B. &c.

Where a man distrains for an Amerciament in a Hundred, and impounds the Beasts, and the other party takes them out, the Writ shall be thus:

Ostensurus quare cum idem A. per C. & D. Ballivos suos de Hundredo de N. quoddam Jumentum ipsius B. apud S. infra Præcinctum Hundredi præd pro quodam Amerciament ad quod idem B. amerciat. fuit in eodem hundredo ad opus prædict. A. levando capi fecisset & iidem Ballivi Jumentum illud secundum legem & consuetudinem regni nostri ibidem imparcassent. prædictus B. Parcum illum vi & armis &c.

Here in this Writ it ought to be shewed, that the property of the Beasts were in him who was amercied, for that, that he cannot distrain a Strangers Cattel for this amerciament.

But for Rent or Services arrear, it is other wise, for there the Party to whom those Rents or Services were arrear, may distrain what Cattel he finds upon the ground, levant and couchant.

This

This Writ lyes, albeit the impounding be unlawfull, as where the Party that is distrained for Damage-feasant, do offer sufficient amends after the taking, and before the impounding, and the Party so distraining doth refuse it.

The like case of one that hath a Replevin, or other coloured Authority (not good in Law) by vertue whereof he gets out the Cattell.

Where a man hath a good Authority and breaks the Pound before he demand the Cattell of the Keeper of the Pound, and he do interrupt him in the taking of them; in all these Cases the Party grieved may have this Writ for his remedy.

The Proceses in this Action after Summons, are Attachment, and Distress infinite.

Rescues we come now to treat of, and the rather, for that it hath some relation to that we spake formerly of.

THE word *Rescues*, is two wayes applyable, either to persons or things.

To persons, and that is, when a man is arrested, and he himself, or another in his behalf, doth rescue him.

The other relates to things, and of that we now treat, as having affinity to that of [*Parco Fracto*] immediately before spoken of, *F. N. B. 100.*

This is a Writ lying, where one, or his Servant doth distrain for Rent-Services, or Damage-feasant, or for any other cause, and being about to impound the Distress, another taketh it away from him, and will not suffer him to impound it; in this case the Party hurt or grieved may have this Writ for his relief against him that made this rescue, and shall recover Damages for it.

Where a man distrains Cattell, and in driving them to the Pound, they get into the Owners house, and he doth withhold them from the distraining, and he will not suffer him to drive them to the Pound; this is a Rescue, for which this Action lyes.

If a man be coming to distrain, and the Owner drive away the Cattell, and he that is about to distrain doth follow them upon a fresh pursuit and the Party will not let him have them, but drive them away; in this case he may have this Writ as his remedy.

But if before one be come in sight, the Owner drive out the Cattel, or they go out themselves, so that he misseeth of that Distress he intended, this Writ will not lye for this.

If the Lord distrain his Tenant without cause, and unjustly, and it be rescued, it seems this Action doth lye.

Note, That if any other but the Lord do distrain upon his Tenant without cause, or out of time and place, in any of the Cases before recited, this Action will not lye.

The Processes in this Action are as follows.

The first is a Summons, and then Attachment, and Distringas, and then Alias and Plures Distringas.

The Writ of Summons is thus :

REX, &c. Vic. L. salutem. Si A. &c. pone, &c. Offensum quare cum idem A. in damno suo apud S. quadam Averia, (vel sic.) Averia prad. B. cepisset & ea secundum legem & consuet. Regni nostri nuper imparcare voluisset : Pradictus B. Averia pradicta vi & armis rescussit & alia enormia, &c. ei intulit. Ad grave damnum, &c. & contra pacem, &c.

Aliter per. servientem.

Ostenfurus quare cum idem A. in damno suo apud S. per C. servientem suum quadam Averia (vel sic.) Averia prad. J. B. capi fecisset & idem C. Averia illa secundum legem & consuet. Regni nostri imparcare voluisset : Pradictus B. Averia pradicta vi & armis rescussit, & alia enormia, &c.

Pro consuetudinibus & serviciis.

Note, Where a man distrains Beasts and dead Chattels, there the Writ is thus :

Ostenfurus quare cum idem A. in feodo suo apud S. per consuet. & serviciis sibi debitis per C. servientem suum quadam Averia Capi (vel sic.) quadam Carectam ipsius B. capi fecisset. Et idem C. Carectam illam usque Maneriam prad. A. de S. secundum legem & consuetudinem Regni nostri Anglia detinendum ducere voluisset prad. B. Carectam illam vi & armis recussit & ipsum, &c.

De Averis & Catallis

If

If the Party appear not upon the Summons, then as before you are to proceed to Attachment and Distress infinite.
In case he appear, you may declare as follows.

O Stensurus quare cum idem A in feodo suo apud S. pro consuetudinibus & serviciis sibi debitis, quedam Averia & Catalla (vel averia & catalla pred. B. cepisset, & averia illa ibidem imparcare & catalla nomine districtionis secundum legem, & consuet. Regni nostri Anglie ibidem retinere voluisset, idem B. Averia illa vi & armis recuisset. Et Catalla pred. eidem A. abstulit & alia enormia, &c.

W Arr. T. G. nuper &c. Attachiat. fuit ad respondend. T. B. de placito quare cum idem T. B. in feodo suo apud C. pro consuetudinibus & serviciis sibi debitis. per C. A. Ballivum suum quedam Averia capi fecisset & idem T. B. Averia illa secundum legem & consuetud. Regni Dom. nostri Regis Anglie ibidem imparcare voluisset pred. T. G. Averia illa vi & armis rescuisset. Et alia enormia ei intulit ad grave damnum ipsius T. B. & contra pacem Dom. Regis nunc &c. Et unde idem T. B. per I. H. Attorn. suum querit quare cum idem T. B. decimo die N. Anno Regni Dom. Regis nunc xv. in feodo suo in uno mesuagio, & uno gardino cum pertin. pred. T. G. tunc tenuit de ipso T. B. per fidelitatem & redditum decem solidorum singulis Annis ad Festa St. Mich. Archang. & Pasche tenuit per equales portiones solvend. de quibus serviciis idem T. B. fuit seisisus per manus pred. T. G. ut per manus veri tenentis sui pro conf. & serviciis pro decem solidis eidem T. B. pro uno Anno integro fuit ad Festum Sancti Mich. Archang. prox ante pred. decimo N. Anno xv. supradicto debet. per pred. T. G. Ballivum suum quedam Averia videl. duas vacas nomine districtionis capi fecisset & idem T. G. Averia illa secundum legem & cons. Regni Dom. Regis Anglie ibidem imparcare voluisset. Prædictus T. G. prædict. decimo die N. Anno xv. supradict. Averia illa rescuisset. Et alia enormia, &c. Ad grave damnum, &c. Et contra pacem, &c. Et unde, &c.

Et prædictus T. C. per I. R. Attorn. suum ven. & defend. vim & injur. quando, &c. Et quod venire vi & armis & quicquid &c. dicit quod ipse non est cul. de transgress. aut rescusum prædict. prout præd. T. B. superius versas eum recuperit,

petit, &c. Et quod residuum transgressionem superius fieri supposit. idem T. G. dic. quod præd. T. B. Actionem suam prædictam versus eum habere non debet, quod tenementa præd. cum pertin. sunt & prædicto tempore quo supponit. transgressionem & remissionem prædict. fieri, fuerunt extra feodum ipsius T. B. Et hoc &c. unde petit Judicium si præd. T. B. Actionem, &c. Et præd. T. B. dic. quod ipse per aliqua per eundem T. G. præallegat. ab actione sua præd. versus præd. T. G. habend. præcludi non debet, quia dicit quod tenementa præd. cum pertin. sunt & prædicto tempore quo, &c. fuerunt infra feodum, ipsius T. B. prout idem T. B. per breve & narrationem suam præd. superius suppon. Et de hoc pbn. se super patriam. Et præd. T. G. similiter. Ideo &c. xij. &c.

Affize comes now to be treated of, an Action which formerly was much in use, and although for the present not so much in practise, yet to preserve the knowledge of it, we shall here discover somewhat of the nature of the Action, together with the proceedings thereupon.

THE Process is Attachment against the Party, Summons, *Habeas Corpora*, and *Distringas*, vid. 3. 106.

Affizes were *Temp. Devant*. &c. but the Novel disseisin was since the Conquest, 2. *Inst* 15.

Before the Statute of *Magna Charta*, Affizes were returnable either *Coram Rege*, or in the Court of Common-Bench.

The Defendant shall not be effoined, he shall not cast a Prohibition, he shall not pray in aid, unless of the King.

He shall not vouch any *Distringas*, or any Party to the Rent, unless he enter into Warranty presently.

The same Law of Resceit.

The Parol that shall not demur for Infancy.

ASSIZE is a Writ, and it lyeth where a man is put out of his Lands, Tenements, or of any Profits, to be taken in a certain place, as of an office, &c. and so disseised of the Free-hold, (which Free-hold to any man is where he is seized of Lands or Tenements, or Profits to be taken in Fee-simple, Fee-tail for term of his own life, or for term of another mans life) but Tenant by *Elegit*, Tenant by Statute-Merchant,

Tenant

Tenant by Statute-staple, may have Affize, although they have not Free-hold, and this directed by divers Statutes.

IN an affize it is always needful, that there be a Disseisor and a Tenant, or otherwise the Writ shall abate.

Also where a man is disseised, and recovereth by an Affize of Novel disseisin, and afterwards is again disseised by the same Disseisor, he shall have against him a Writ of Re-disseisin directed to the Sheriff to make inquisition, and if the Re-disseisin directed to the Sheriff to make Inquisition, be found, he shall be sent to Prison: Also, if one recover by an Affize of Mortdancester, or by other Jury, or by default, or by rendition; and if he be an other time disseised, then he shall have a Writ, *De post disseisin*, and he which is taken and imprisoned for re-disseisin, shall not be delivered without special Commandment of the King: See the Statute thereof, *Merton*, Chap. 3. *Marlebridge*, Chap. 8. and *Westminster* 2. Chap. 26.

There is also another Affize, called an Affize of Fresh Force, and lynch, where a man is disseised of Tenements, which are devisable, as in the City of *London*, or other Burroughs or Towns that be Franchises, then the Plaintiff shall come into the Court of the said Town, and enter his Plaint, and shall have a Writ directed to the Mayor or Bayliffs, and thereupon shall pass a Jury in manner of Affize of Novel disseisin; but it behoveth, that he do enter his Plaint within 40 days, as it is said, or otherwise he shall be sent to the Common-Law, and if the Officers delay the Execution, then the Plaintiff shall have another Writ to have Execution, and a *Sicut alias*, and a *Plures*.

This Affize brancheth it self further into an, 1. Affize of *Darrein Presentment*, of which we have before spoken.

2. Affize de *Mortdancester*.

An Affize of *Mortdancester* shall be brought in like manner, as an Affize of Novel Disseisin shall be; and in Affize of Novel Disseisin before the Justices of the Common-Bench or of the Upper Bench, a certain day shall be put in there, as unto Thursday after 15 days after Easter, &c. But in an Affize of *Mortdancester*, a common day shall be given, and 15 days, &c. or in 8 days, &c.

Vid.

Vid. F. N. B. **I**N an Affize of Novel Disseisin in the 177. &c. Common-Bench, or in the Kings Bench, the Justices may give a day out of Term; unto Thursday next after such a Fealt, &c. for that an Affize hath not any day after a day of return in the Term; but a certain day which the Justices will give him, and this may be as well out of the Term as in the Term, and that by the Statute of *Articuli super Chartas*, which directs, that in every Writ of Summons and Attachment, there ought to be 15 days between the date and the return of it: But in an Affize of Novel disseisin in the Common-Bench or in the Kings-Bench, there need not to be had 15 days between the date and the return of it, as it seems by the Statute.

In an Affize of Novel Disseisin sued before Justices in Eyre, or before the Justices of the Kings-Bench or of the Common-Bench, the Plaintiff needs not to have any Patent to the Justices, for they have authority without Patent, and so have the Justices of Affize authority to take Affize of Novel Disseisin without any Patent made unto them, and that by the Statute of *Westminster 2. Chap. the 13.*

If the Affize be brought in the Kings-Bench, or in the Common-Bench, then the Writ runs thus.

Aliter coram Rege.

REX Vicecom. L. salutem. Quæstus est nobis A. quod B. injuste &c. usq; ibi else in pace, usq; ad diem Sabbati proximum post Crastinum Animarum proxime futur. Et interim &c. Et summonneas &c. quod tunc sit coram nobis apud Westm. vel coram Justiciariis nostris apud Westm. parat. inde &c. Et habens &c.

If the Writ be brought before the Justices of Affize, then the alteration is thus.

The Writ is all one with the former, till after the word (Peace) and then you say untill the next Affizes, when our Justices shall come into those parts.

If the Writ of Affize be brought before other Justices, then to the Justices of Affize in the same County, and then the Writ is as followeth.

REX

REX Vic. L. salutem. Questus est nobis A. quod B injuste & sine Judicio desseisivit eum de libero tenemento suo in E. post primam transfretation. Dom. H. Regis filii Regis Johannis in Vascon. Et ideo tibi precipimus, quod si prædictus A. fecerit te securam de clamore suo prosequend. tunc facias tenementum illud reseil. de catallis que in ipso capta fuerint, & ipsum tenementum cum catallis esse in pace usq; ad primam Assisam cum Justiciariis nostri in partes illas venerunt. Et interim facias xii. liberos & legales homines devicenetam illam videre tenementum illud & nomina eorum mibreviar. Et Sumnoneas eos per bonos summonitores quod tunc sint coram præfatis Justiciariis ad præfatam Assisam, parati facere cognitionem. Et pone per Vadia & salvos plegios prædictum B. vel Ballivum suum si ipse inventus non fuerit quod tunc sit ibidem audiendum illam Recognitionem. Et habeas ibidem summon. nomina & plegiorum, & hoc breve T. me ipso apud W. primo die F. &c.

Upon this Writ there ought to be a special Patent directed to the same Justices, for that they are not Justices of Assize for that County.

If a man have rent-service, rent-charge, or a rent-seck issuing out of Land for term of life, or in fee-tail, or fee-simple, if he be disseised of this rent, he shall have a Writ of Assize of this rent, and the Writ shall be generall, That unjustly, &c. he did disseize him of his Freehold in N. and he shall make his title to the rent, &c. when he declares, &c.

A man may have an assize of divers rents, or of Land and Rents and Offices, and Profits, to be taken in a mans soile, and all in one Writ.

If a man have any Profit granted unto him out of any lands for term of life or in fee, as to have the fruits, whether Apples, Pears, Nuts, or Acorns, or other Profits whatsoever, he may have an assize of them, if he be deforced of them.

So likewise of a tole of a marker, of a Passage or Ferry of Postage or Pannage, and other like things, he may have this Writ of Assize.

*What Seisin is sufficient to have an
Assize.*

S Eisin of parcel of the Rent is sufficient to have Assize of all the Rent.

*Vid. Kitch.
Eng. 120.*

The Provost or Warden of a Colledge shall have an Assize for rent, where his predecessor was seised, and not he himself; for the Seisin of the predecessors is the seisin of the house. The same case of the Wardens of an Hospital.

If a man which hath a title to enter, set his foot upon the land, and is outed, that is a sufficient seisin to have an Assize.

If one put in his Beasts to use my Common by my commandment, this is a sufficient Seisin for me to have an Assize.

Using of Common by Tenant at will, is sufficient Seisin for him in the reversion to have an assize of Common, if he or his Tenant at will be disturbed

Reversion was granted to J. S. and the Tenant for life at-
torns and dies, and J. S. enters by the windows, (for that he cannot enter by the door) when one half of his body was in, he was pulled out, and yet that is a sufficient seisin to have an Assize.

The Proceſs in this action are Summons, Attachment, and Distress.

Where you are to declare, you may in case it be for Common of Pasture, making the ensuing your president.

Buck. ff. **A** Ssiza ven. recogn. Si R. J. H. J. & W. J. injuste &c. disseisivit J. W. & M. uxorem ejus de libero tenemento suo in T infra triginta annos jam ult. elaps. &c. Et unde iidem J. & M. per J. T. Attorn. suum quer. quod præd. R. H. & M. disseis. ill. de uno messuag & quatuor acris pasturæ cum pertin. &c. super quæ assisa præd. ex assensu partium prædictarum propter temporis brevitatem reman. capiend. coram præfat. Justic. ad Assisas & his quos Dominus Rex eis assignavit usq; prox. Assisas, videlicet die Lune tunc prox. sequen. apud parvam B. in Com. præd. prox. tenend. Id. vic. habeat tunc ibidem corpora recogn. &c. & appon. & tales &c. Et interim &c. Idem dies dar. est tam partibus prædictis & eorum recogn quam recogn Assisæ præd. ad tunc & ibidem &c.

Ad

Ad quem quidem diem præd. J. & M. quoad præd. quatuor, ac. palturæ in querela sua præd. spec. cum pertin. juxta formam statuti in hujusmod. casu provis. all remanere querelam suam præd. &c. inde &c. Et modo ad hunc diem Lunæ in ven. tam. præd. J. & M. quam prædict.

R. J. H. J. and W. J. per Attorn. suos præd. & præd. H. J. & W. J. dic. quod ipsi nullam injur. seu disseisin. præfat J. W. & M. inde fecer. & de hoc pon. se super Assisam, & præd J. W. & M. similiter Ideo capiatur inde int. eos Assisa. &c.

Et præd. R. J. ut tenen. mesuag. præd. cum pertin. in visum ponit. & in querela præd. spec. cum pertin. Abiq; hoc quod præd. H. J. & W. J. aliquid habuer. in mesuag. præd. die impetration. Assise præd. vel unquam postea, & quoad præd. mesuag. cum pertin. Dist. R. J. dic. quod assisam inde int. ipsum & præd. J. W. & M. fieri non debet, quia dic quod quidam R. T. & M. T. T. W. & S. S. fuer. inde seisit. in Domin suo ut de feodo & sic de præd. mesuag. seisit. existen. per cartam suam feoffamenti geren. dat. xxvj. Die Septem, Anno Regni Regis Henrici vj post conquest. xxiiij. De dicto mesuagio feoffaverunt quendam H. J. Haben. eid. H. & hered. suis in perpetuum, virtutu cujus feoffamenti dictus H. J. fuit de mesuag. præd seisit. in dominico suo ut de feod. Cujus quidem H. Stat in dicto mesuag. cum pertin. præd R. J. modo habet & præd. J. W. & M. clamando mesuag. præd. cum pertin. colore cujusdem chartæ Feoffament iisdem J. & M. per præd. R. M. T. & S. fact. per quam quidem chartam nichil. mesuag. præd. cum pertin. in possessionem suam transivit & in mesuag. præd. cum pertin. intraverunt : super possessionem quor. rum quidem R. & M. inde quidam J. T. intravit super cujus quidem J. T. possessionem, inde præd. R. J. reven. prout ei bene licuit super quo præd. J. W. & M. arran. Assisam suam præd. & hoc parat. est verificare, unde pet. Judicium si præd. J. W. & M. Assisam suam præd. versus eum manutenere debeant, &c.

Et præd. J. W. & M. dic. quod ipsi per aliqua præallegat. ab Assisa sua præd. præcludi non debent quia dic. quod bene & verum est quod præd. H. J. fuit seisit. de mesuag. præd. cum pertin. in dominico suo ut de feodo & sic seisit. de dicto mesuag. præd cum pertin. int. alia cuidam W. J. filio suo & uxori ejus & hæred. de corporibus eorum legitime procreat prætextu cujus idem W. & I. fuer. inde seisit in dominico suo ut

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ut de feodo talliat. Et habere exit. ind eis legit. procreat. Met J. quæ quidam M. cepit in virum suum ipsum. J. W. modo quer. Et postea præd. W. & J. obierunt post quorum mortem mesuag. præd. cum pertin. virtute Doni. præd. descend. præfat. M. ut fill. & hæred. dist. W. & J. de eorum corporibus legitime procreat. per quod iidem J. W. & M. in mesuagium præd. cum pertin. in jure ipsius M. intraverunt & fuer. Inde seisit in dominico suo ut de feodo talliat in jure ipsius M. prætextu Doni præd. & sic fuer. inde seist. quousque præd. R. H. & W. in breve Assis. præd. nominat. ipsius J. W. & M. de mesuagio præd. cum pertin. injuste & sine judicio & vi & armis discei. siverunt. Et hoc parat sunt verificare. und pet. Iudicium. Et procedatur inde inter. Et præfat. R. J. & W. ad captionem Assis. & prædict. &c.

There are several Pleas specially to be pleaded in this action, both in bar and abatement, which arise according to the title of the defendants part.

A Lease for years, or for life, the reversion to the Plaintiff or a Feofment of the Plaintiffs, with warranty, and rely upon the warranty, is a good Barr.

The Tenant may plead, that partition was made between the Plaintiff and J. S. whose Estate he hath, and it is a good barr.

If the Plaintiff choose one to be his Tenant of all where he is not, the Writ shall abate.

An Assise is brought of Tenements in D. and S. the Tenant sayes, that all is in S. that being so, the Writ shall abate, for he cannot abridge the whole Town, but see now by the Statute of 23 Hen 8 Cap. 3. where he may abridg.

The Bayliff may plead *Non tenure*, or misnaming of the Plaintiff, but not of his Master, and conclude it, &c.

The Bayliff may plead, that the Tenements are in another Town, for that is an abatement.

The Bayliff may plead mis-naming and Joyntenancy without deed.

A Bayliff may plead not attached by 15 days.

After Adjournment upon the Plea of the Bayliff, the Tenant may plead matter which comes of latter time.

The Tenant himself, after the assize awarded, may leave his Barr, and plead the general issue, but he cannot plead a new barr after Issue.

If

If a plea be pleaded, and the Justices die, all shall be plead-
ed anew, but if they be at Issue that shall stand.

Where they are adjoyned upon a plea in abatement, and af-
ter the Writ is awarded good, he may afterwards plead in
Barr.

Thus much may suffice to have spoken of Assize.

We should now come to treat of divers other Actions, as
Contributions facienda, Quid Juris clamat, Per qua servitia,
Et per quem redditum; & divers others of those natures, and fin-
ding them to be very obsolete and out of use, and that the Law
hath provided remedies by the foregoing Actions in most of
those Cases, and that the proceedings thereupon (chiefly for
the trying of Titles) are far more expeditious, and more cer-
tain, and with less trouble and danger to the Clyent; I think
it will not be time ill spent, to insert some brief rules, both in
Ejections firm. and some other Actions before spoken of, which
were then omitted, and hope though they come not in the di-
rect places of those Titles, will be very useful for the Attor-
ney.

*These proceedings are referred to the Title foregoing of this
Subject.*

OF the Procefs in this Action we have before spoken, and
of the pleadings and proceedings upon it, but because
many of them miscarry, by reason that the proceedings before
procefs, relating to the Lessors entry, the making of the Lease,
the entry of the Lessee, by vertue of the Lease, the Ejectors en-
try upon him, and his Ouster and Ejectment, where care is not
taken, and they be not circumspect to prevent a defect in any of
these, it causeth much danger and prejudice of the Clyent, and
causeth no little disgrace to the Attorney. In this Action also
as very useful, we shall speak to these things in order.

1. The Entry of the Lessor that hath the right.
2. The Lease made by him for tryal of the Title.
3. The entry of the Lessee, by vertue of a Lease so made.
4. The entry upon him, and his Ouster and Ejectment.

First, is to be considered, what right and title the Lessor
hath to enter, whether he hath any right or title to the
lands or no; for if the right and title appear on the defendants
part, the Plaintiffs Action will fail.

N

Now

Now a man may have a Right or Title to that Land, where of he hath no possession or property; as where Land is taken from a man wrongfully by Disseisin, in this Case the challenge and Claim of him from whom it is taken, is called a Right. There is a Right of Action, which is, where there is no remedy left, but an Action to recover the Land; and there is a right of Entry, when the party claiming, may for his relief, either enter into the Land, or have an Action to recover it.

There is a Title of Entry, which is, where no wrong is done, and yet one who hath a lawful course to enter upon the Land which another hath, hath no Action to recover it; as where Entry is given to a man for a Condition broken upon an Escheat, the Tenant dying without Heir.

In all which Cases, he must make his Entry before he can bring his Action.

The property and title of Land is made, and may be gained several ways.

1. Either by Entry, as in case of occupation, where Land is granted to *J. S.* for another mans life, and *J. S.* dyes; in this Case, he that first gets into possession shall have the Estate.

2. By Discent, where one hath Land of Inheritance, and dyeth, not disposing of it.

3. By Escheat, where the owner dyeth seised without any Heir, which may be, in case he have onely a bastard; or, because he is attainted of treason, or felony.

4. By Conveyance, and so the property of Land is transferred, and so it is passed ten manner of wayes, as follow.

Fine, Recovery, Feoffment, Grant, Lease, Bargain and Sale, Exchange, Surrender, Release, Confirmation.

A man may have property in Land also by an Execution, as by *Elegit*, or *Extent*.

If he ever had a Right of Entry into the Land, it must be considered, whether it doth continue and be not taken away; for one may have a Right of Action, and no Right of Entry to recover his Land, and he that will maintain this Action, must make himself a title under the Lessor, that had a right of Entry into the Land when he made the Lease; for he that makes the Lease, must have power and right of Entry, at the time of the Lease made, otherwise neither the Entry nor the Lease will be good.

Now

Now, that the Entry may be good and warrantable by the Lessor; for otherwise the Action is not maintainable; take these Rules following.

1. This Entry is to be made by the party that hath right.
2. It is a purposed going into, or setting his foot upon the Land, as upon his own Land.
3. This may be done by the party himself that hath right to enter, or by his Attorney, by a Warrant from him, or by any other to his use; and if it be done by Attorney, he must have a good Authority, and see he do duly pursue it.

Note, that one Joynt-tenant, Tenant in Common, or Co-partner, having right to enter, may, if he will, enter for all the rest.

If such a person enter generally, or for, or in the name of himself and the rest; and the rest do not afterwards disagree to it, this is a good Entry for himself and the rest; and therefore if one have Issue, a Son and Daughter by one Venter, and a son by another, and being seised of Copy-hold Land, devise all to the younger son, and dy, and he enter into all; this Entry shall avail the eldest son, to put him in possession of the third part.

The Entry into one part, may be sufficient to gain the possession of the rest of the Land.

The Entry into parts, must be in the name of all, &c.

If one restrain his own Entry, and make it special, and say, that it shall be to such an Acre onely where he puts his foot; in this Case it reduceth the possession of no more but that part, &c.

If a Lease be made to *A.* and delivered to *B.* to the use of *A.* and *B.* enter to the use of *A.* and after is outed, *A.* may have his Action upon the Entry.

Having done with Entry, we come now to speak of Leases for it is absolutely requisite for the maintaining of this Action that a good and warrantable Lease be shewed forth.

For the better enabling of you to make such Lease, take these Rules following.

1. The Lease to try the Title must be well made, sealed, and delivered as other Leases, and Deeds are done; and for that, see the Book of Common Assurance, Chap. 4. 14. A Book very useful for many Conveyances, both in this and other kinds.

2. The Lease and Entry may be made by the party Lessor himself, if he be of full age and not a Feme-Covert, or by his Attorney, by a Letter of Attorney, wherein the Lessor may seal and sign the Lease, and seal and deliver the Letter of Attorney at one and the same time, to some friend of his; and in this Letter of Attorney, he must recite the Lease, and give the Attorney power to enter into the Land, and there to deliver the Lease of the Lessee as his Deed, and then the Attorney must do it in such sort, as the Lessor himself ought to do it; and he must not deliver it till he come to the Land.

3. The Lease must be delivered upon the Land; for if the Lessor seal, and deliver the Lease before he hath made his Entry upon the Land, it is void.

The Husband and Wife may make a Lease and a Letter of Attorney, to enter and deliver it upon the Land, and this is good.

A Woman Covert, or an Infant, cannot make a Letter of Attorney, to seal a Lease, to try a Title, as a man of full age may do.

The Husband alone may make a Lease of his Wifes Lands.

A Copy-holder may make a Lease to try the Title for a year without License.

A Tenant in Common may make a Lease to try the Title for his part, &c. for a year, &c.

The usual Tract that is used in sealing this Lease of Ejectment, is as follows.

Where a man hath a Title to an house, land, or both, and desires to gain the possession; it is useful to make a Lease (to some friend (who he is assured will not deceive his trust, but will surrender up the lease, &c.) for two or three years, or more, for so long as he may be sure the time is not expired, before he gets his Tryal and Judgment.

This Lease being made, he goes with such his friend, the Lessee, to the Mannor, or chief house, or stands within the door, or to the Land where no house is, where he seals, and delivers it to his friend, and taking the Ring, or any part of the door in his hand, delivers the Lease, mentioning the house and lands, with the appurtenances, which are contained in the Lease, to his said friend the Lessee.

This being done, and that you go away, whosoever after that

stays

stays in the house, or whosoever enters next into the house, whether Master, servant, or stranger, is an Ejector, and is proper to be made Defendant.

In case you find no Ejector, you may, if you so think fit, appoint one to that purpose.

The Lease being sealed, and delivered to your friend as before, the party appointed to be the Ejector, may go into the House, and thereby you going away, he is become Ejector.

Where you thus appoint an Ejector, you must be sure to give notice to the Tenant of the land, to defend the Title upon the Ejectors appearance.

Where the Tenant of the land hath but a lease, he must give notice to the Lord in whom the Fee-simple is, that he may be ready with his Evidences, &c. to defend the Title.

Note, that if you cannot come into the house, you may deliver the lease upon the lands, in the name of the house and land contained in the lease; and he that comes next after your going away, upon the land, is an Ejector.

Where it cannot be proved that the Lessee after the Lease made, did enter and was possessed, this Action will not be maintainable, and therefore we must now say something of the Entry of the Lessee.

1. He must make such an Entry as to gain the possession, for he cannot be ejected out of the possession of that wherein by Law he never was.

2. His possession must continue; for if upon sealing of the Lease, and the delivery of it to the Lessee upon the Premises, the Lessor leave him upon the house or Land, and that he be entered, or come away, &c. and another enter; whether it be a continuance of the same Tenant in possession, or the entry of a stranger; here his possession is discontinued, and any of those partyes are Ejectors.

For the Ejectors take this.

The entry of a man upon the Land after the Lease sealed, or the putting in the Beast upon the Land, in the like Case is an Ejectment.

The continuance of the same Tenant in possession, that was in the time of the sealing of the Lease, is an Ejection, and the Tenant an Ejector.

Where a Lease is made to try the Title, and the servants of the former possessor enter with their Masters Carts to do their

utmost, and the Action is brought against the Master ; it is maintainable without proof of the Masters Commandment for this entry.

In some Cases this Writ lies, and not in others.

It lies of a Mannor-house, Land, Meadow, Pasture, Tythe, or such like things.

It lies of an Orchard ; It lyeth of a Kitchin ; It lyeth of a Chamber ; It lyeth also of a Coal-mine ; It lyeth also of a Bayliwick.

It lyeth not upon a Lease of a Stock of Cattel, nor upon a Lease of a Sum of Money, nor of a Water-course.

The Writ must set forth the certainty of the thing, both for quantity and quality ; as so many Messuages, so many Cottages, so many Acres of Land, so many Acres of Meadow, so many Acres of Pasture, &c.

Thus much for *Ejectiones firmæ*, before omitted.

In Actions of Account, take these Observations following :

Note, Where a Bayliff doth make a Deputy, yet the Writ must be against the Bayliff himself.

If a stranger take the profit of my Wifes land, during Marriage, and I die, my Executor and not my Wife, shall have this Action.

This Action lies against the Husband, for the receipt of his Wife ; and against the Wife and Husband, for the receipt of the Wife whilst she was sole.

It lies against a Body Politick, as against a single man.

It lies against the Keepers of a Park, that have the charge of Deer, as Bayliffs of his Park, &c.

An Action of Account lies not in these Cases following :

1. Where the Party sued claimeth the thing to his own use.
2. Where there is no privity between the parties, neither *Ex provisione Legis*, called Privity in Law, as in the Case of Guardian ; nor in Deed, by the consent of the Party ; as when Goods are delivered to a stranger, and not to my use, nor to be delivered over to me, there is no agreement between the parties.
3. When he that hath delivered the things hath taken an Obligation for security of the things delivered.
4. Where

4. Where the party that hath the things hath a bare oversight of them ; as a Bayliff of a Plough, and a Shepherd of Sheep, &c.

A Bayliff shall have allowance upon his Account, but a Receiver shall have none.

If the Bayliff disburse any thing for his Master belonging to his Office ; as to pay his Quit-rent, or the like ; or if he be robbed, or suffer loss by other means, without any default in him, it shall be allowed him upon his Account. But if he pay his Masters debts, or lay out any thing else, not appertaining to his Office, this will not be allowed him.

There are two Judgments upon this Writ ; the first is, (*Quod computet*) which is interlocutory : the last is, *Quod querens recuperet versus defendentem*, so much as he is found in arrearages, and *Damna occasione interplacitationis*.

The first is to account only, and upon this the Defendant may be Outlawed ; and then before Outlawry, if he appear and enter into account, and be found in arrearages, the Plaintiff shall have a definitive Judgement for the arrearages ; and after the first Judgment, no abatement can be for any cause ; but a Discontinuance or a Non-suit may be.

The first Judgment is but an award of the Court, like to a Writ of Inquiry of Damages, and not like a final Judgment ; for there the Action is clearly determined : And these two Judgments depend one upon another ; for if Judgment be to account, and the Plaintiff die before he hath accounted, the Executor cannot go on in that Suit, but he must begin again, and no Writ of Error will be upon the first, till after the second Judgment.

We have now gone through the most general and useful Practice of the Common Pleas, relating to the several Actions before-going ; as also, of all Offices and Officers incident to that Court : And now, as before we promised, hereto is added a Table of the Fees of that Court, and of all Offices whatsoever relating to the Court, or the Practice of it, belonging to every Office or Officer, which follow in order.

The Fees hereunder-mentioned, are the Fees due, and paid to the Lord Chief Justice, and the other Justices of the Court of Common Pleas at Westminster, as they were due, and usually paid to the Justices of the same Court.

The Lord Chief Justice his Fees.

FOr allowance of a Writ of Error upon an Outlawry before Judgment. 20 s.

For a Bail taken upon an Outlawry upon mean Process in debt, if the debt be 20 l. or above. 2 s. 4 d.

For the allowance of a Writ of Error upon a Judgment. 20 s.

For Bail taken in case of debt after Judgment. 12 s.

For the allowance of a Writ of Error upon a Judgment upon a *Scire facias*, and Outlawry after Judgment. 35 s.

Making the Roll.

For making the Roll that a Writ of Error is allowed on. 2 s.

Superfedeas, Transcript.

For a *Superfedeas*. 3 s.

For the Transcript of a Record, being a *Prefs*. 6 s. 8 d.

For every *Prefs* more. 6 s. 8 d.

Certiorari.

For the Return of every *Certiorari*. 14 s. 9 d.

Seal Nisi pr.

For the Seal of every Record of *Nisi prius*. 2 s. 1 d.

Seal. of Writs, and Exemph.

For the Seal of every Writ sealed in Court. 1 d.

For the Seal of every Exemplification. 2 d.

These Fees following are due to such of the Judges who do perform the Business.

Fines.

FOr acknowledgment of a Fine or Warrant of Attorney for a common Recovery of Courts. 6 s. 8 d.

Sign. Writs.

For signing every Writ of Privilege to remove any Cause, *Habeas Corpus*, *Procedendo*, or *Superfedeas* upon a *Procedendo*. 4 s.

Bails.

For every Bail taken out of Court upon any such Writ of Privilege, wherein one Cause onely is returned. 9 s. 8 d.

Confessions.

For the confession of a Judgment out of Court. 9 s. 8 d.

Bails.

For every Phillizers Bail, and other Bail taken out of Court. 9 s. 8 d.

Satisfaction.

For acknowledging satisfaction out of Court. 9 s. 8 d.

For

For acknowledging out of Court a Deed to be Inrolled.	Deeds ac- 9 s. 8 d.
For admission of a Guardian out of Court.	9 s. 8 d. Guardians.
For the proof of a Suggestion out of Court, for every Suggestion.	9 s. 8 d.
Witness.	9 s. 8 d.
For a Warrant for passing of a Fine, where there are more than three Cognizors, or three Cognizees, parties to the Fine.	Warrant for Fines. 4 s.
For every Affidavit taken out of Court upon a Foreign Affidavit.	2 s.
Plea, or Rescous.	8 d.
For any other Affidavit taken out of Court.	8 d. Information.
For exhibiting any Information out of Court.	8 d.
For signing a Bill of Costs to award an Attachment for not appearing upon a Sub-pena	8 d.
For granting a License to compound upon a penal Law.	2 s.
For assessing of the Kings part of a Forfeiture upon a penal Statute, after Composition with the Informer.	2 s.
For the Commitment out of Court of a Prisoner to the Fleet, charged with one Cause only.	9 s. 8 d. Commitments.
For every Bail taken out of Court upon an Outlawry in debt upon mean Process reversed, if the same be twenty pounds.	2 s. 4 d. Bails on Out- lawries.

Divident Fees.

These Fees following are due to the Lord Chief Justice, and Fees in Court the other Judges of the Court of Common Pleas, by way to the Box. of Divident.

For confessing of a Judgment in Court	6 d. Judgment.
For acknowledging satisfaction in Court, if the debt or damage do not amount unto 100 l.	6 d. Satisfaction.
If the debt or damage do amount to 100 l. 12 d. and for every 100 l. after the same rate.	12 d.
For admitting an Infant in Court to his Guardian	12 d. Guardian.
For reversing an Outlawry in Court, for Error in the Exigent, or Return.	12 d. Vilag.
For the like, for the insufficiency of the Proclamation or Return, or for want of a Proclamation.	2 s.
	For

<i>Recovery.</i>	For every common Recovery acknowledged in Court.	6 d.
<i>Fines.</i>	For a Fine acknowledged in Court.	6 d.
<i>Bails.</i>	For a Bail taken in Court, or a Bail or Recognizance acknowledged in Court.	12 d.
<i>Deeds.</i>	For a Deed acknowledged in Court to be inrolled.	12 d.
<i>Discontinu.</i>	For a Discontinuance.	12 d.
<i>Prohibition.</i>	For a Prohibition granted.	9 s. 8 d.
<i>Wagers of law.</i>	For every Wager of Law, or Non-suit upon a Wager of Law.	6 d.
<i>Attorney sworn.</i>	For admission of an Attorney to be an Attorney of this Court.	20 s.

The Puisse Judges Fees.

<i>Fines.</i>	For every Fine drawn at Bar.	12 d.
<i>Recoveries.</i>	For a Recovery drawn at the Bar with a single Voucher.	18 d.
	For every Voucher more.	6 d.
<i>Reversals.</i>	For Reversal of an Outlawry in Court.	4 s.
<i>Privy Verdict.</i>	For taking a Privy Verdict.	6 s. 8 d.
<i>Costs taxed.</i>	For taxing of Costs upon every Verdict.	12 d.
<i>Feed. annuall</i>	From the Clerk of the Warrants every Term, to every	
<i>Clericus Warr.</i>	of the Puisse Judges.	33 s.
<i>Rec. Att.</i>	For every Attorney, whose Name is recorded in the Roll of Attorneys, every Term.	4 d.
<i>Inrolling Fines & Recoveries.</i>	For Inrolling and Examining the parts of a Fine, and Writs upon Common Recoveries, by the Statute of 23 Elix.	6 s.
<i>Exemplification thereof.</i>	For the Exemplification and Examination of the parts of a Fine, and Writs upon Common Recoveries, by that Statute.	5 s.
<i>Rules for Amendments.</i>	For drawing and entring a Rule for an Amendment upon that Statute.	12 d.
<i>Searches.</i>	For a search made upon the Inrolment upon that Statute.	4 d.
<i>Copies.</i>	For a Copy of a Fine, or Writs inrolled upon Common Recoveries, by that Statute, for every sheet.	4 d.
<i>Ret. of Writs of Covenant and Entries.</i>	For the Return of every Writ of Covenant brought to levy a Fine upon.	10 d.
	For the Return of every Writ of Entry to suffer a common	mon

ourt.
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mon Recovery, every Writ of Summons and Seisin thereupon.

10 d.

An ancient Fee of 6 s. 8 d. for signing of a *Dedimus potestatem*, due to the Judges of any Court, who do assign the same, which is now, and of late hath been divided amongst all the Judges that ride the Circuits.

These Fees following are due to the Clerks of the Lord Chief Justice, and other the Justices of the said Court.

TO all Judges Clerks of the Fines, for taking of a Fine, or Warrant of Attorney.

3 s. 4 d.

For certifying of a Fine, or Return of a *Dedimus potestatem*.

16 d. Attorneys.

To the Judges Clerk of Bails, for taking every Bail.

12 d.

For entring every *Caveat* to give notice that good Bail may be taken.

12 d.

For satisfaction acknowledged out of Court.

12 d. Satisfaction.

For a Deed acknowledged out of Court to be inrolled.

12 d. Deeds acknowledged.

For the proof of a Suggestion out of Court, for every Witness.

12 d.

For an Affidavit taken out of Court.

4 d. Affidavits.

For entring into his Book an Information exhibited out of Court.

4 d.

For entring into his Book of Costs a Warrant signed to award an Attachment for not appearing upon a *Sub-pena*.

4 d.

For admission to a Guardian.

12 d. Guardian.

For entring into his Book a License to compound upon Penal Law.

4 d.

For entring into his Book the Kings part of the Forfeiture upon a Penal Law assessed by the Judges, after composition with the Informer.

6 d.

For entring into his Book a Commitment out of Court of a Prisoner to the Fleet, charged with one Cause onely.

12 d.

To the puisne Judges Clerk of the Inrolments, for Copying, Inrolling, and Examining the parts of a Fine and Writs upon a Recovery, by the Statute of 23 Eliz. 8 s.

4 d. For

For a search made for an Inrolment upon that Statute.

8 d.

For writing a Fine, or Writs inrolled upon a Common Recovery, inrolled by that Statute.

8 d.

The *Custos Brevium*, who is the prime and first Officer of the Court, his Fees.

These Fees following, are the Fees which are taken by the Custos Brevium of his Majesties Court of Common Pleas, and his Clerks in right of his said Office, and as they were taken, 11 Eliz. by the then Master of the said Office, and his Clerks.

Post diem.

IN *primis*, For filing any Writ, or other Record, coming after the day of the Return thereof, except Writs of Privilege, *De veniendo & redeundo*, and also Writs of Privilege called *Prop.* or *Post diem*.

4 d.

Post. Term.

Item, For filing any Writ, or other Record (except before excepted) coming after the Term wherein it was returnable called a *Post Term*.

10 d.

Item, For filing any Writ, or other Record, coming after two Terms, called *Post Term*, for every Term after, apiece; except Exigents and Outlawries, which pay but only

3 d.

Item, To the Clerk of the same Office (*ab antiquo*) who enters the same.

2 d.

Item, Upon the making of the Stat. 4 H. 7. cap. 24. the *Custos Brevium* was allowed by the Court, for carrying and re-carrying of every Fine levied according to that Statute, to *Westminster*, to the *Chirographer* to proclaim, four Terms.

8 d.

Item, For keeping three parts of the Record of every Fine consisting of five parts, 4 d. apiece.

12 d.

In tot. for every Fine 3 s. 8 d. whereof the Master hath 2 s. 6 d. and 14 d. is allowed to the Clerks.

3 s. 8 d.

Amendments.

Item, For the amendment of every Writ, or other Record, per Warrant Cur.

20 d.

Non est fact.

Item, For every *Non est factum* pleaded in Court.

2 s.

Sheriffs bund.

Item, For every Sheriffs bundle of Writs returnable of the

the

the precedent Term, and coming before Eſſoyn-day of the second Return of the new Term. 8 d.

The usual Fees allowed by the Custos Brevium to the Clerks of his Office.

<i>In primis</i> , for every Temple-search.	4 d.	
<i>Item</i> , out of every <i>Westminster</i> search.	2 s. 1 d.	<i>Searches.</i>
<i>Item</i> , To the Clerks out of the allowance of every <i>Certiorari</i> , 2 s. 8 d. and for certifying the same, <i>secundum longitudinem</i> , and according to reason.	2 s. 8 d.	<i>Certiorari.</i>
<i>Item</i> , to the Clerk for writing and examining of every exemplification, <i>secundum longitudinem</i>		<i>Exemplificas.</i>
<i>Item</i> , To the Clerk for any Writ, or other Record carried into the Court.	4 d.	<i>Porta Bre.</i>
<i>Item</i> , for entring a common Recovery-writ, <i>super disseisnam in le poſt.</i>	8 d.	<i>Cur. Bre. de Ingr.</i>
<i>Item</i> , for every Fine passing in the Office.	1 d.	<i>& seifina.</i>
<i>Item</i> , for entring into a Book every <i>Ne recipiatur</i> coming under a Judges hand, or by order of Court.	12 d.	<i>Fin. s. Ne recipiatur.</i>
<i>Item</i> , for every Note of Jurors names for the Clerk of the Juries to make further Proceſs by.	4 d.	<i>Nota Jur.</i>
<i>Item</i> , for every note of an <i>Exigent</i> , for the Clerk of the Outlawryes to make further Proceſs by.	8 d.	<i>Copia Exig.</i>
<i>Item</i> , for the search of any Book of Entryes of any Writs for every Term.	8 d.	<i>Searches.</i>
<i>Item</i> , for the Copy of any Writ or other Record, for every sheet.	8 d.	<i>Copies.</i>

The usual Fees allowed by the Custos Brevium, to the Bag-bearer of the Office, being alwayes the Common Voucher of the Court.

<i>In primis</i> , for every search under five years.	1 d.	<i>Searches.</i>
<i>Item</i> , for every Temple search.	5 d.	
For every <i>Westminster</i> search.	12 d.	
For any Writ or other Record carried into the Court.	5 d.	<i>Porta Bre. in Cur. Recuper.</i>
For every common Recovery suffered in Court (being the common Vouchee)	4 d.	<i>a piece</i>
For every Attorney sworn in Court.	6 d.	<i>Attorn. Jur.</i>
		<i>The</i>

The Fees of the Clerk of the Inrolments of Warrants and Eftreats in the Common Pleas, as are now, and have been taken these two and thirty years, and, as I conceive, were taken ever since 31 Eliz. saving the Fees hereafter mentioned, allowed per ordin. Cur.

Inrolments.

Every Inrolment containing a side of a Roll. 5 s.
For a full Roll. 10 s.

And so according to the Rate.

Warr. Attorn.

Every Warrant of Attorney in debt, transfer. & detinue, 4 d.

The Sheriffs Warrants. 12 d.

Every other Warrant, call'd Double Warrants. 8 d.

For a Post Term. 4 d.

The Lord Mayor of London his Warrant. 5 s. 8 d.

The Secondaries of the Computers in Easter Term yearly. 13 s. 4 d.

War. jur.

For entering of an Attorneys name in the Roll of Attorneys, upon his first admittance. 3 s. 4 d.

War. sur fine.

For a Warrant upon a Writ of Covenant, per ordin. Cur. 4 d.

Rott. Astorn.

Paid to the Clerk by every Attorney, 4 d. a Term, called the Roll Groat, which is paid to the Judges Box, and I conceive it to be due ever since 11 Eliz. 4 d.

Recuperat.

Paid also to the Clerk by the Prothonotaries. 12 d.

Upon every Recovery, which is also paid to the Judges. 12 d.

Attorn. jur.

To the Clerk, when an Attorney is first sworn. 12 d.

The Chyrographers Fees.

Fines.

In primis, The ancient Fee limited by the Stat. 11 Eliz. for every Fine. 4 s.

Item, From 4 H. 7. for the service in proclaiming Fines. 8 d.

Item, By Stat. 23 Eliz. for writing the Roll. 4 d.

So the Chirographers Fee for every Fine is 5 s.

Other

Other Fees also due, and anciently paid to the
Chirographers, viz.

For exemplifying a Fine the Term in which it was in-
grossed. *Exemplifica-*
2 s. 8 d. *tion.*

For every Sheet of every Fine, of twelve Lines copied
out of the Record. 12 d. *Copy.*

For the sight of every Record, being ancient, from H. 8.
upwards. 3 s. 4 d.

For the search of every Fine from H. 8. to this present, *Searches.*
for every year. 8 d.

For the search of every Fine during the Reign of H. 8.
for every year. 12 d.

For certifying of every Record by a Writ of Errour, *Certiorari.*
12 s.

For a *Quid juris clamat, quem redditum, & per que Quid jur. cla-*
servit. 6 s. 6 d.

For entering a Claim upon a Record. 5 s. *Claims.*

For allowing of Proclamations upon Fines brought into *Post Fines.*
the Office after the Term ended 6 d.

For the *Post Termin*, of a Fine. 12 d. *Post Term.*

The Chirographers Clerks Fee for ingrossing of Fines by
the Attorney which sues them out.

The Chirographers Clerks have received an allowance *Fines ingros-*
of the Attorneys for their pains for them, which here-
tofore hath been more advantageous unto them then now
it is, being reduced to 2 s. 6 d. in certain, had and made at
the request of an hundred or eighty of the most ancient At-
torneys, with John Brewer Esq; Clerk of the said Office,
in 2^d Br 3 of King James. To which Agreement had and
made in writing, the said Attorneys set their hands, and the
same was delivered to Sir Edward Cook Knight, then Chief
Justice of the Common Pleas, and hath so continued ever
since. 2 s. 6 d.

For this allowance the Clerks do write more than all
the Officers through which Fines do pass, viz. They write
every Fine, long or short, four times over in a great set
hand.

Fees

Fees belonging to the Clerks of the Treasury.

<i>Copy.</i>	F Or the Copy of every Issue and Imparlance, for every sheet,	4 d.
	For every Judgment, Deed inrolled, and real Action, for every sheet,	8 d.
<i>Searches.</i>	For the search of every Term above ten years,	4 s.
<i>Exemplification.</i>	For every Exemplification, not exceeding three sheets,	7 s.
	For every sheet more,	12 d.
<i>Records of Nisi Prius.</i>	For every Record of <i>Nisi Prius</i> , not exceeding three sheets.	2 s.
	For every sheet more.	4 d.

Fees for the Keepers of the Treasury, from
12 Eliz.

<i>Searches.</i>	I N <i>primis</i> , for search of a Term above ten years,	8 d.
	For seven year and under ten years,	4 d.
<i>Portland Rot.</i>	For three years,	4 d.
<i>Ligand. Rot.</i>	For search of a Plea-roll,	4 d.
	For Roll carried into the Court,	6 d.
	For making up a Term and Record,	3 s.
<i>Attorn. jur.</i>	For every Attorney sworn in Court,	12 s.
<i>Jur. at Bar.</i>	For a Jury at Barr,	5 s.
<i>Nisi prius Adid.</i>	For a <i>Nisi Prius</i> in <i>Midf.</i>	2 s.
<i>Wager de leg.</i>	For a wager in Law,	5 d.
	For a Copy of a <i>Pracipe</i> , after the Term,	18 d.
<i>Copy per fines.</i>	For a Fine acknowledged in the Treasury,	4 d.
	For a Warrant of Attorney left un-entred, and comes to be entred in the Roll after Term,	4 d.
<i>Intra pt. Term.</i>	For an Entry left out of the Kings Silver, and comes to be entred in the Office,	4 d.
<i>Feed. annuall.</i>	From the Clerk of the Treasury for my attendance every Term,	5 s.
<i>Claves Thos.</i>	For my Key after the Term,	18 d.

The Fees of the Clerk of the Kings Silver, as they were taken in the eleventh year of Queen Elizabeth, in the sixteenth year of King James, and in the late Kings time, and since.

In primis, For the Fees of every ordinary Fine taken by Fines in the Lord Chief Justice of the Common Pleas, or any Western Circ. Judge of Assize in the Western Circuit, together with the Copy, or Post Fine, 18 d.

For every Fine taken in the same Circuit by special Fines by special Commission, and for the Copy of the Post Fine, 12 d. al Com.

For every ordinary Fine elsewhere in England, and Ordin. Fines. Monmouthshire, taken as aforesaid without Commission, and for the Copy, 10 d.

For every Fine taken by special Commission out of the Western Circ. Wiltm Circuit, and for the Copy, 14 d.

For every several Caption in any Fine where it is taken Several Cap. at several times by special Commission, over and above tions. the former rates, 4 d.

For every Fine certified by Certiorari after the death of Certiorari. any Judge, or other Commissioners, over and above the former rates, 6 d.

For the Post Termin. of every Fine brought in the next Post Term. Vacation after return of the Writ of Covenant, 6 d.

For every search of any Fine every Term, 4 d. Searches.

For every Copy of the Entry of the Kings Silver, 8 d. Copia.

For every Fee of a Ne recipiatur, of any Fine, either by Ne recipiatur. Order, or Warrant of the Court, or any Judge, 3 s. 4 d.

For the continuing of any such Order or Warrant from Term to Term, till it be dissolved, 3 s. 4 d.

The Philizers Fee.

In primis, For every Cap. Al. & Plur. Cap. in Debt, Diti- Cap. Al. & one, and Trespass, not having more than four Names in Plur. a Writ, and Entry thereof, 6 d.

Item, For delivery of every first Cap upon Record and Delivery of re- Entry thereof, 4 d. cord of the Ca.

For every Testat. upon any of the said Writ, Pon in Testat. Pons Replevin & Summons, 12 d. Sum.

Item,

O

<i>Brev. in comp.</i>	<i>Item</i> , For every <i>Cap. Al. & Plur.</i> in Accompt. Covenant, Annuity, <i>Ejectione firme</i> , and upon a penal Statute,	12 d.
<i>Actions super casum.</i>	<i>Item</i> , For every Writ in an Action upon the Case, or more, according to the length,	11 d.
<i>Ret. Habend.</i>	For every Return. <i>Habend.</i> and second Deliverance, and Entry thereof,	2 s. 6 d.
<i>Non omit. Withernam.</i>	For every <i>Non omit. & Cap.</i> in <i>Withernam</i> ,	2 s.
<i>Partit. Waste, Impedit, and Waste,</i>	For every Writ of Partition, Warrant. <i>Charta, Quar.</i>	12 d.
<i>Quar. Imp. & Inqu. de dam. Scire fac. & Superseas.</i>	For every Writ of Inquiry of Damages in real Actions,	2 s.
<i>Scire fac. Superseas. Gr & of,</i>	For every <i>Grand Cap. Al. Sum per Cap.</i> and Entry thereof,	2 s. 6 d.
<i>pet. Cap. Copia inde. View.</i>	For the Copy of the Entry thereof,	8 d.
	For the demand in every Writ of View, and Entry thereof,	2 s. 6 d.
<i>Seisin.</i>	For every Writ of Seisin, and Entry thereof,	4 s. 6 d.
	For the View Prayer,	2 s.
	For a Copy of the Entry thereof,	8 d.
<i>Habeas corp. & Distring.</i>	For every Writ of <i>Habeas Corpus, duc. coram, distring. super vicecom. & distring. Ballivum,</i>	2 s.
<i>Adjournment.</i>	For every Writ of Rescous, and Entry thereof,	2 s.
<i>cont. resort.</i>	For the Entry of every Adjournment, Discontinuance,	4 d.
<i>Rescous.</i>	and Resort,	4 d.
	For every special Bail, and the Entry thereof,	2 s. 10 d.
	For every Appearance in real and mixt Actions,	4 d.
<i>Appearance.</i>	For every appearance upon Writs to arrest, and Entry thereof,	12 d.
<i>Search Rules, Copies, Numb. rolls.</i>	For Searches, Copies, Number-Rolls, and giving of Rules, each of them,	4 d.

Exigenters Fees.

Feod. Exigenters.

EVer since the Statute of *Henry* the Eighth, which gave the Proclamation upon the *Exigent*, the whole Estate of the *Exigenters* Office did consist in making of three Writs, viz. an *Exigent*, a *Superseas*, and a *Proclamation*, all which Writs are warranted by one and the same Record.

For

For all the time of our remembrance and experience in the said Court, which hath been (by the most ancient of us) for about thirty years or thereabouts, the Fees of the said Writs were as follow, viz.

The <i>Superfedeas</i> ,	2 s.
The <i>Exigent</i> ,	11 d.
The <i>Proclamation</i> ,	6 d.

Which Fee of 6 d. was given by the Statute of 6 H. 8. being now about a hundred and ten years since.

About eight or nine years since, the *Superfedeas* (*quia improvidi*.) being the least Writ in labour, and more in profit than both the other, was granted by Letters Patents under the great Seal of England, by the late King of famous memory, to Master John Murray, then of his Majesties Bed-Chamber; and partly to avoid contestation with his said Majesties grant, and upon hopes of some recompence other way, the *Exigents* did give way to the said Patent, and have ever since lost the benefit of the *Superfedeas*; whereupon the Judges did give increase onely of one penny to be taken upon the *Exigent*, for the relief of the *Exigents*, and their Clerks, and so the *Exigent* was made 12 pence; which increase of a penny, is all the recompence which hitherto they have received for that great loss of the *Superfedeas*.

We have likewise heard, That above forty years since, and before our times, by occasion of an Act of Parliament, made 21 Eliz. whereby the Proclamation of the *Exigent* was much enlarged, without any addition or increase of Fee, there was one penny added to the *Exigent*, to be given to the poor Clerks for writing the said Writs, over and above the ancient allowance; which penny hath ever since been paid to the said poor Clerks accordingly, without any benefit to the Masters themselves.

Other increase, addition, or alteration of Fees in our Office, we know not of, nor never heard of, although the length of the said *Exigent*, or Proclamation, with their Entries, considering the loss of the *Superfedeas* (all which we humbly submit to his Majesties Commissioners) might perhaps have justly deserved some further improvement. And it is certainly true, that no other increase of Fees hath been in our Offices since 11 Eliz. nor for ought we ever heard,

heard, or can by any means conjecture for these hundred years at the least.

Hilar. Tertio CAROLI Regis.

The Chief Clerks of the Jurors.

A Note of all such Fees as are now usually taken by the Clerks of the Jurors of his Majesties Court of Common Pleas at Westminster, being the same and no other than such as have been taken time out of mind.

<i>Habeas corp.</i>	I nprimis, For a Writ of Habeas Corpora, jurator, in debt and trespass,	10 d.
	For the like Writ in all other Actions,	16 d.
<i>Distring.</i>	For a <i>Distringas cum decem Tales</i> ,	2 s. 4 d.
<i>Search. Copy.</i>	For Terms search, the Copy of a Jury, a Number-roll,	
<i>Court adjourn.</i>	and a Discontinuance and Adjournment for every of them,	4 d.

The Clerk of the Essoins.

<i>Essoin & Exc.</i>	I nprimis, For every Essoin and Exception,	4 d.
	For the Copy,	4 d.
	For every Adjournment,	4 d.
<i>Copia.</i>	For the Copy,	2 d.
<i>Idem dies.</i>	For every <i>Idem dies</i> ,	4 d.
<i>Adjournment.</i>	For every Non-suit for want of Adjournment in Actions personal	2 s. 4 d.
<i>Copies.</i>	For the Copy,	12 d.
<i>Non prof.</i>	For the Exemplification of every Essoin and Non-suit thereupon, when it shall happen, being very seldom,	7 s. 6 d.
<i>Exemplificat.</i>	For the Copy thereof,	3 s. 4 d.
	For the Clerk,	12 d.
<i>Fees, annuales.</i>	For several Fees from several Officers of the Court towards the numbering and marking of the Rolls,	4 l. 9 s.

Outlawry

Outlawry Office.

In the Kings Attorney General his Office of Outlawries, executed by his Deputy Mr. Johnson, the Fees are as follow,
viz.

- F**Or a special *Capias Utlagat.* against Body, Lands, and *Cap. Ut. spe.*
Goods, 2 s. 4 d. *cial.*
For a *Proprium*, 14 d.
For every Writ of *Hab. Corp.* & *duces tecum*, when they *Habeas Corp.*
are sued forth, 2 s. 4 d. *duces tecum.*
If a *Propr.* 14 d.
For a general *Cap. Utlagat.* 10 d. *Cap. Ut. ge-*
If a *Propr.* 6 d. *neral.*
For ingrossing and certifying a special Writ, with the *Certif. nil. in*
Inquisition returned by the Sheriff, of Lands, or Goods *lett.*
found thereupon, and for the *Exigent*, with the Return
thereof at large certified into the Exchequer, when it is
required, the Office-fee is eight Shillings, unless it be com-
manded by the Lord Treasurer, Chancellor, or Barons of
the Exchequer, or by the Kings Attorney-General or Sol-
licitor, for his Majesties Service only, then no Fees are
due. 8 s. *ant nil.*
For ingrossing and certifying a Reversal into the Exche- *Certif. Revers-*
quer, to discharge seisure upon Outlawries, when any is, *sal in Scaccar.*
5 s.
And to the Clerk, 4 d.
For entering the Reversal in the Outlawry Office to dis- *Exon. libri de*
charge all Process thereupon, or upon any Writ of Error, *Utl.*
2 s. 8 d.
For certifying of an Outlawry, or Reversal when it is *Certific Ut*
pleaded, 2 s. *vel Reversal.*
And to the Clerk, 4 d.
For the search of an Outlawry one Term (as in all other *Search.*
Offices) 4 d.
If above a year, then 3 d. a Term is the utmost, 3 d.
For entering and filing an *Exigent*, with one Process *Elat. Exig.*
thereupon, 4 d.

These several Fees aforesaid, were paid and received in Easter Term, 34 Eliz. and ever since, to mine own knowledge; for so long I have been and continued Clerk, and to all Attorney Generals that have been since that time.

These (as I understand) are the true Fees.

The Fees of the Seal for Writts.

Seal of Writts.

ALL Writts for the Kings Bench and Common Pleas, 7 d.

Exemplificat.

The Exemplification of the Kings Bench, 2 s. 6 d.

The Exemplification of the Common Pleas, 2 s. 6 d.

Outlawry, 1 d.

Propr. 1 d.

Fees due to the Marshal, and Proclamator of the Court of Common Pleas, given by Order made by all the Judges of the Court, Term Trin. 31 H. 1. Post Conquestum, and received accordingly by the said Marshal and Proclamator, for any thing appeareth to the contrary, until 11 Eliz. and ever since.

*Judgments.
Fines.*

IN *primis*, For every Judgment and Nonsuit, 4 d.

Item, For every Fine, 8 d.

Item, For every final Judgment, 12 d.

Chief Usher of the Exchequer, and Marshal and Proclamator of the said Court of Common Pleas, by Lease from Clement Walker Esq; who hath the same Office in inheritance by Grand Serjeanty.

The four Cryers.

Hereafter do ensue the good Ordinances and Rules made as well by the Kings Justices of the Common Pleas in times past, as by the Justices now being, for the good Rule and Order of the said Court; which same now Justices do charge and command every of the said Officers

cers and Attorneys well and truly to observe and keep, upon the pains therein limited.

Which said Orders were inrolled *Termin. Trin. 35 H. 1. Post Conquestum, Rot. 494. Jo. Priest* Chief Justice of the Common Pleas, *Ni. Austen, Pet. Arder, Ro. Davers, Ro. Dwy, Wa. Moil, and John Needham*, Justices of the same Court.

The Cryers Fees from 11 Eliz.

F Or every Judgment,	4 d. <i>Judgments.</i>
For every final Judgment,	12 d.
For every Non-suit,	4 d.
For every Fine,	8 d. <i>Fines.</i>
For every Recovery,	8 d. <i>Recoveries.</i>
For calling a Jury, if they fill not,	2 s. <i>Juries.</i>
For every Jury, if they fill, and serve, and give up their Verdict the same day at the Bar, and for keeping them till then,	6 s.
If the Jury lie all night, that we be forced to watch and wait on them all night,	30 s.
For carrying every Bundle of Records out of the Treasury into the Court, and back again into the Treasury,	6 d.
For every Attorney that is sworn,	6 d. <i>Attorn. jur.</i>
For every Bail,	12 d. <i>Bails.</i>
For every Oath in Court,	12 d. <i>Oaths.</i>
For every Wager of Law, old Fees,	4 s. 4 d. <i>Wager of Law</i>
For every <i>Scire facias</i> called in Court,	4 d.
For every <i>Nisi prius</i> before my Lord Chief Justice,	4 s. <i>Nisi Prius.</i>
For every admittance to a Guardian,	12 d. <i>Guardians.</i>

The Fees of the Keepers of the Court, from 11 Eliz.

F Or the Clerk of the Treasury, for hanging the Cloth <i>Food annuall</i> of the Court,	6 s. 8 d.
For a Wager of Law, and Wager-men,	9 s. 6 d. <i>Wager of Law</i>
For a Jury at Bar,	5 s.
For every Attorney sworn in Court,	12 d. <i>Attorn. jur.</i>
O 4	For

<i>Nisi prius.</i>	For a <i>Nisi prius</i> in <i>Midd.</i>	2 s.
<i>Bails.</i>	For a Bail,	4 d.
<i>Fines.</i>	For a Fine,	4 d.
<i>Deeds ackno.</i>	For a Deed acknowledged,	2 s.
<i>Satisfaction.</i>	For Satisfaction acknowledged,	2 s.

The Fees of the Clerk of the Inrolment of Fines and Recoveries.

<i>Of Fines and Recoveries in gross.</i>	I N <i>primis</i> , The Fee due to the Judges by the Statute of 13 Eliz. for inrolling of every Fine and Recovery,	6 s. 8 d.
<i>Exemplificat.</i>	Item, Due to the Judges by the same Statute for exemplifying every Inrolment,	5 s.
<i>Searches.</i>	For search of every Fine inrolled, for every year,	16 d.
<i>Copies</i>	For copying every Fine inrolled, for every sheet,	1 d.
<i>Inrolments.</i>	For the Clerks Fee for inrolling by the Roll,	
<i>Exemplificat.</i>	For exemplifying after the same rate	8 s. 4 d.
<i>Rules for amendments.</i>	For every Rule upon Amendments,	3 s. 4 d.
<i>Writ of Entry, Covenant, Seijins, &c.</i>	For returning Writs of Covenants upon Fines, and Writs of Entry, Summons, and Seijins upon common Recoveries, as Deputy of Record for Sheriffs appointed by the Court, the ancient Fee is,	2 s.

The Porter of the Court his Fees from 11 Eliz.

<i>Writs of Entry</i>	F OR every Writ of Entry with Mr. Attorney General,	4 d.
<i>Juries at Bar.</i>	For a Jury at Bar,	5 s.
<i>Nisi prius.</i>	For a <i>Nisi prius</i> ,	2 s.
<i>Wager of Law</i>	For a Wager of Law,	6 d.
<i>Fines.</i>	For a Fine acknowledged,	4 d.
<i>Bails.</i>	For a Bail,	4 d.
<i>Satisfaction.</i>	For Satisfaction acknowledged,	2 d.
<i>Attorn sworn.</i>	For the Attorneys Oath,	12 d.
<i>Guardian.</i>	For a Guardian,	4 d.

Aliena.

Alienation Office.

Thomas Ravenscroft, Francis Poulton, George Coultron,
Esq; Commissioners.

Tho. Bond Esq; Receiver.

Take no Fees, but receive a certain stipend from the King.

Fees taken by the Master of the Chancery, for that Office appointed.

For signing every Docquet upon License and pardon Docquet.
of Alienation, 2 s.

For every Writ of Entry, for Lands holden in chief, *Pr. Writs.* 2 s.

For Writs of Entry of Lands not holden in chief, 4 d.

For Affidavits upon discharge of Tenures 2 s. *Affidavits.*

The usual Fees taken in the Office of Compositions for Alienations, by the Clerks there.

For a Certificate upon a Writ of Entry, 3 s. 4 d. *Certificate.*
For the Warrant to the Great Seal for pardon of *Pardon.*
Alienation, 10 s.

For veiwing the Subjects Evidences, search of the Te- *Discharge of*
nures, and drawing of the Affidavit with Process, to be *Process.*
discharged, 6 s. 8 d.

For a Release in nature of a pardon of Alienation upon *Releases.*
a common Recovery, and for the like Release upon a
special Livery, and also for a Release upon a general Par-
don at the Coronation, or other times, for each of them,

1 l. 3 s. 4 d.

For a note of a Sheriffs Discharge upon a Seizure, *Discharge of*
3 s. 4 d. *Seizure.*

For every Exo. and for certifying thereof into the Ex-
chequer, 12 d.

For the Sheriffs acquittance, 6 s. 8 d. *Acquittances.*

For

<i>Entry of Writs.</i>	F Or entering in a large Book every Writ of Covenant finable, <i>videlicet</i> , in the Term time, 6 d. And in the vacation, 11 d.
<i>Licence of Alienation.</i>	For entering in another Book remaining in the said Office every Docquet upon a license of Alienation in the Term time, 12 d. And in the vacation, 2 s.
<i>Pardon.</i>	For every Docquet for a pardon of Alienation in Process of <i>Distingas</i> or <i>Scire facias</i>
<i>Ent. of lands holden in Capite.</i>	For every Writ of Entry of Lands holden in <i>Capite</i> , and entered in the same Book, 6 d. And in the vacation, 12 d.
<i>Indorsing Bre Intr. Bre.</i>	F Or indorsing every Writ of Entry, 6 d. For indorsing every Writ of Covenant in Term, 4 d. In the vacation, 6 d. For entering unfiled Writs, 6 d.
<i>Discharge of Tenures.</i>	For drawing the Discharges of Tenures in Parliament, and entering them, 3 s.

The Under-Sheriff of Middlesex taketh these Fees following in his Majesties Court of the Common-Pleas.

<i>Warrant.</i>	F Or a Warrant upon a <i>Capias</i> for every name, 4 d.
<i>Return Venire facias.</i>	For return of a <i>Venire facias</i> , 2 s.
<i>Return habeas Corpus.</i>	For a Warrant upon a <i>Capias</i> <i>utlagat</i> , 4 d.
<i>Sum. Jur.</i>	For the return of a <i>Habeas Corpora Juratorum</i> , 4 d.
<i>Capi Corpus.</i>	For summoning the jury for every name, 4 d.
<i>Return exi.</i>	For a <i>Capi Corpus</i> for every name, 4 d.
<i>Return procl.</i>	For the return of an <i>Exigent</i> for every name, 4 d.
<i>Scire facias.</i>	For return of a Proclamation, 12 d.
	For the return of a <i>Scire facias</i> , 2 s.
	For the return of a <i>Nihil habet</i> on a <i>Scire facias</i> , 12 d.

The

The Warden of the Fleet, his Fees.

A Note of the Fees due and belonging to the Warden of the Fleet, and under Officers, as appeareth by a Commission under the Great Seal of England, from the late Queen Elizabeth, in the third year of her Reign, and confirmed in the seven and thirtieth year of her Reign, what every several Prisoner in their several degrees ought to pay.

AN Arch-Bishop, a Duke, a Dutcheſs, are to pay for *Commitments* their Commitment Fee to the ſaid Warden and his Officers, having the firſt weeks dyet with Wine. 2 l. 10 s.

Alſo they have to pay for their ordinary weekly dyet with Wine, 3 l. 6 s. 8 d.

A Marquis, a Marchioneſs, an Earl, a Counteſs, a Viſcount, *Commitments* Viſcounteſs, are to pay for their Commitment-fee to the ſaid Wardens and his Officers, having the firſt weeks Dyet. 14 l. 11 s.

Alſo they are to pay for their ordinary weekly dyet with Wine. 2 l.

A Lord Spiritual or Temporal, a Lady the wife of a Baron, or Lord, are to pay for their Commitment-fee as aboveſaid, having the firſt weeks dyet with Wine, 11 l.

4 s. 10 d.

Alſo they are to pay for their ordinary weekly commons with wine. 1 l. 6 s. 8 d.

A Knight, a Lady the wife of a Knight, a Doctor of Divinity, a Doctor of Law, or others of like calling, are to pay as aforeſaid for their Commitment Fee, having the firſt weeks dyet with Wine. 5 l.

Alſo they are to pay for their ordinary weekly commons with Wine. 18 s. 6 d.

An Eſquire, a Gentleman, a Gentlewoman that ſhall ſit at the Parlour Commons, or any perſon under that degree, that ſhall be at the ſame Commons, are to pay for their commitment-fee as aforeſaid, having the firſt weeks dyet with Wine. *Commitment.* 3 l. 6 s. 8 d.

Alſo they are to pay for their ordinary weekly Commons with Wine. 10 s.

A Yeoman, or any other that ſhall be at the Hall-Commons,

mons, man or woman; are to pay for their commitment-fee, having their first weeks dyet 33 s. 4 d.

Also they are to pay for their ordinary weekly commons 5 s.

A poor man in the Ward, that hath part of the Box, is to pay for his commitment-fee having no dyet. 7 s. 4 d.

licence to go abroad.

Also there is due to the said Warden, 10 d. per diem, for the whole day, and 10 d. for every man, that he may lawfully give license to go abroad.

Return of Writs.

Moreover the said Warden hath for return of Writs, as the Sheriffs and Bayliffs of Liberties have, by which he hath allowance for return of every *Habeas Corpus* or attachment. 2 s. 4 d.

Also for every *Habeas Corpus cum causa*, there are fees for returning the causes, *Viz.*

For allowing the Writ. 2 s. 4 d.

For returning the first cause. 2 s.

For execution. 2 d.

For every Action. 12 d.

Bringing a prisoner to the bar.

Which are due to the Wardens Clerks, and five shillings to the Wardens servants for bringing every Prisoner safe to the Barr.

Allowance of Superseas.

Also he hath for allowance of every *Superseas* and discharge, 2 s. 4 d.

Travell. charges for apprehending parties committed.

Also when any man is committed by order out of the Court of Star-chamber, Chancery, Court of Wards and Liveries, Court of Exchequer, Court of Requests, and Court of Dutchy, the Wardens servants (being sent to apprehend them and bring them to the Fleet, according to the Tenour of their commitment have) 4 d. the mile where they are apprehended, and 6 d. the mile back again, and the Clerk hath 2 s. for making the Writ.

A Table of the due Fees of the Prothonotaries Court in the Common-Pleas.

These are the Fees due and belonging to the three Prothonotaries of the Court of Common-Pleas at Westminster for entries of Declarations, Pleas, and Judgments And also for the making and entring of Writs in their several Offices, and for other dues belonging to them, confirmed and allowed by the late King, by his Letters Patents under the Great Seal of England, dated at Canbury the 22 of July in the 12th year of hisreign and are mentioned and expressed in a Schedule of Fees to the said Letters annexed, and recorded in his Majesty's Court of Common-Pleas at Westminster, in the Term of St. Michael next following, Rot, quinto, sexto, septimo octavo, nono.

Inprimis, for the entry of every common Declaration, Common De-
common Plea in Bar, wherein no Free-hold is pleaded, *clarations and*
common Replication, and Rejoinder in Actions Personal, *Pleas.*

12 d.

For the entry of every special Declaration, special Plea *Special Narr.*
in Bar, or abatement, free-hold, Replication, or Rejoyn- *in Actions per-*
der, and Pleas subsequent, in sheets every sheet containing *sonal.*
12 lines at the least, and every line containing ten words.

2 s.

And for every sheet exceeding.

8 d.

For every Declaration in Actions upon the Case, *Ejoff. Special Narr.*
firmæ, accompt, annuity, conspiracy, coven, deceit, parti- *in Special Ac-*
tion, *Plegios acquiet*, and debt upon Statute, Plaint in *tions.*
size, and the like special Actions, real, mixt, and popular
Actions, if the declaration or Plaint exceed not three sheets

2 s.

And for every sheet exceeding.

8 d.

For the entring of every bar, replication, and pleas, sub- *Bar in special*
sequent in cvery of the actions last above recied, and in *Actions*
the like actions not exceeding three sheets.

2 s.

And for every sheet so exceeding

8 d.

For the Oyer of every Bill, Obligation, Indenture, Re- *Oyre de faits.*
cord, or Certificate, or the like, entred in *hac verba*, not
exceeding the length of three sheets

2 s.

And

	And for every sheet above that length.	8 d.
<i>Appearance.</i>	For Recording every appearance by the Court.	2 s. 4 d.
<i>Recognizance</i>	For the entry of every Recognizance, without condition, challenge to the Sheriff, or Coroners, or to the array, or other special averments.	2 s.
	And for the entring of every Recognizance, with a condition.	4 s.
<i>Judgment.</i>	For every Judgment in Debt, Trespass, or Detinue, without a Tales for the Prothonotary.	2 s.
<i>Adjournment.</i>	And for entring every Adjournment.	4 d.
<i>Judgment.</i>	For every Judgement with a Tales, besides the Fee above recited.	2 s.
<i>Remanets.</i>	For every <i>Remanet</i> , and Judgment, or costs given to the Defendant by the Statute, besides the Fee above said.	2 s.
<i>Judgments.</i>	For every Judgment in all other Actions, as well personal as mixt, and real, and Prohibitions, and the like.	4 d.
<i>Satisfaction.</i>	For every satisfaction, <i>Recordatur</i> , discontinuance, <i>Recordatur</i> .	4 s.
<i>Recordatur.</i>	<i>traxit</i> , relinquishment, <i>Nolle prosequi</i> , or the like, in Actions personal.	4 s.
<i>Disc. retraxit.</i>	And in real Actions	2 s.
<i>Nolle prosequi</i>	For the entry of every <i>Mittimus</i> & <i>Dedimus potestatem</i> , for a common recovery.	6 s.
<i>Recoveries.</i>	For the entrance of a Summons <i>ad warr.</i> For a common recovery, and the Writ of Summons <i>ad warr.</i>	4 s. 6 d.
	For the entry of a <i>Certiorari</i> to certifie a Warrant of Attorney for the Tenant or Voucher.	4 s.
	And if for both.	6 s.
<i>Forreign Vouchers.</i>	For every forreign Voucher sent to the Common Pleas to summon the Vouchee, if the Record be not above three sheets.	2 s.
	And for every sheet more.	8 d.
	The like Fees are to be paid when the Record is remitted back again, after the Voucher determined.	2 s. 8 d.
<i>Special Verd.</i>	For the entry of every special Verdict, whereupon a <i>Cur. advisar. vult</i> , is entred, being not above the length of three sheets; written as aforesaid	2 s.
	And for every sheet exceeding that length	8 d.
<i>General Verdict.</i>	For the entry of every general Verdict, with a <i>Cur. advisar. vult</i> , without a Tales.	2 s.
	And with a Tales.	4 d.
	For	

For the entry of every *Remittitur* of debt or damages. *Remittitur* 12 d.

For the entry of every Information upon any penal Law, *Information* and signing the *Subpœna* only. 2 s. 8 d.

For the entering of every surmise for a Prohibition to be *Prohibition* granted, not exceeding the length of three sheets, as aforesaid. 2 s.

And for every sheet above that length. 8 d.

For the entry of the oath of every Witness to prove the *Proof de sugg.* Surmise in a Prohibition, or *Audita querela* brought by an Infant, and the entry of the Proofs *De morte & vita viri*, Dower, and the like Action and Suits. 2 s.

For the releasing of any default in any real Action. 2 s.

And entering the recital of the grand Cape. 4 s.

And it under five marks. 0

For examining every Record of *Nisi prius*. 12 d. *Exam. Recor.*

For making the Record for tryal of an Issue in any of the *Rec. in Coun-* County Palatines, for the first three sheets 2 s. 17 Palat.

And for every sheet more after 4 d.

For the Exemplification of any Record, not exceeding *Exemplific.* six sheets. 5 s.

And for every sheet exceeding that rate. 8 d.

For entering of Seisin in Dower, and dying seized, the *Seiz. in Dow.* return of the Seisin, exceeding not above three sheets. 4 s. 10 d.

For every sheet exceeding. 8 d.

For entering of writs of exemption *de non ponend. injurat.* *Non ponend. in* and Patents, *de libert. allocand.* and protections, cognizances of Plats, and the like, according to the rate abovesaid, *Caog. de pleas* if they exceed not three sheets. 2 s.

And for every sheet exceeding. 8 d.

For the entering the default upon the distress in waste, *Judgment per* *Quare Impedit*, and the like, and Judgment thereupon, if default in waste, the title or Court do not exceed three sheets 6 s. 4 d. *Quar. Impedit.*

And if it be more then is aforesaid, for every sheet. 8 d.

For entering of a *Quo Warranto*, if it exceed not three *Quo Warrant.* sheets. 2 s.

For the entry of every plea thereupon according to the same rate as before. 2 s. 8 d.

For the entry of a plea of account pleaded before *Account before* Auditors, if it be not above 3 sheets, written as abovesaid. 2 s. *Auditors.* And

	And if more, for every sheet exceeding.	3 d.
<i>Severances.</i>	For the entry of every summons, and severance, and aid prayer.	2 s.
<i>Aid-prayer.</i>	For the admission of an Infant to his <i>Procheinamy</i> , or Guardian.	2 s.
	And if it be by Commission.	4 s.
<i>Cap. pro fin.</i>	For entring of the Defendants discharge upon a <i>Cap. pui fine</i> , or for a contempt.	2 s.
	For the like upon rescous, returned and admitted to his fine.	4 s.
	For traversing of a rescous, and Issue thereupon.	6 s.
	For entring the allowance of every general and special pardon of outlawry before Judgment, and after.	5 s. 4 d.
	For entring of a <i>Dies dat.</i> in debt, detinne, and trespass.	12 d.
	And in all other Actions	2 s.
	For the entring of a receipt of a feme covert, tenant in tail, lease for years, or the like.	2 s.
	And for the entry of the Plea, if it exceed not three sheets.	2 s.
	And for every sheet exceeding	8 d.
	And if the Receipt be by Writ, then more for entring of the Writ.	2 s.
	For the entring of Assize delivered in the Common Pleas by Justices of Assize to be inrolled, for every sheet.	12 d.
	And if the Assizes comes into the Common Pleas by <i>Certiorari</i> , then more for entring the <i>Certiorari</i> .	2 s.
<i>Abridgment.</i>	For the entry of every Abridgment of the Demand in Dower, Assize, or the like.	2 s.
<i>Pone.</i>	For the entry of every <i>Pone</i> to remove a Plea by Writ out of the county Court there holden by justices, and for the return of the <i>Pone</i> .	4 s.
	For the entring of any Record sent into the Common Pleas by <i>Mittimus</i> , or otherwise; and likewise for the entry of every <i>Rége inconsulto</i> , or such like, if it exceed not three sheets.	2 s.
	For every sheet so exceeding.	8 d.
<i>Certificate of Bastardy.</i>	For the entring of every Certificate of Bastardy certified by the Bishop, and the awarding of the Writ, and Judgment thereupon.	6 d.
	For	

For the entry of the License of the Court to purchase a *Journies* new Writ by Journies Accounts, 2 s. counts.

For the entry of every Original Writ delivered of Record in Real or Mixt Actions, 8 d. *Record*

For the entry of every sheet above three sheets, of every challenge to the Sheriff or Coroners, or to the Array, or other special Averments, or the like, 8 d. *Challenge*

For the entry of every *Remanet* in Real Actions, 4 s. *Remanet*

For the entry of every *Remittitur* in real and mixt Actions, 2 s.

For the entry of every sheet above three sheets, of every *Aid-prayer*. *Aid-Prayer*, 8 d.

For the entry of an admission of a Guardian, if it be by Commission, and *Mittimus*, 6 s. *Guardians*

For the entry of a Private Seal, for every sheet, 8 d. *Privy Seal*

For the entry of the License of the Court to compound upon penal Statutes, 2 s. *License*

For the entry of every Warrant of Attorney made by the Tenants in common Recoveries, or the like, after their appearance at the Bar, 2 s. *Warrant of Attorney*

For every Judgment by special confession of the title in *Quare Imped.* *Quare Impedit*, or the like, if it exceed not three sheets, 4 s.

And for every sheet after, 8 d.

For the entry of every special Impar lance, 2 s. *Special Impar lance*

For the entering of every *Committitur* of a Prisoner by the Roll, being brought to the Bar by Writ, and every tender of the Body in discharge of the Bail, 4 s. *Committitur*

But if it be without Writ, then in either case but 2 s.

For entering of every demand of a Prisoner to appear and demand the said Prisoner, 4 s. *Remand*

For the entering of every Effoin in the Plea Rolls, as upon Wagers of Law, 12 d. *Effoin*

For the entry upon Bail of every Reversal for insufficiency of *Exigent*, or of the return, 2 s.

For the entry of every Declaration in Debt upon *De-narr. sur De-narr.* *De-narr.* or the like special Declaration, if the Declaration exceed not three sheets, 2 s. *De-narr.*

And if such Declaration exceed the number of three sheets, then for the entry of every such sheet, containing lines, and every line 10 words, 8 d.

<i>Commo. Decla.</i>	For the entry of every several count upon an Original in Debt, Detinue, Trespafs, and the like,	12 d.
<i>Actions super Casum</i>	For the entry of every several Count in Actions upon the Case, and Account, and the like upon several days, if the Count exceed not three sheets.	2 s.
<i>Account.</i>	And for every sheet so exceeding	8 d.
<i>Special condition.</i>	For the entry of every special Condition, or Indorſment of any Obligation entred <i>in hac verba</i> , not exceeding the length of three sheets.	2 s.
	And for every sheet so exceeding.	8 d.
<i>Common condition.</i>	But if the condition be in Debt for payment of Money, at one day and under the length of two sheets, then for the entering thereof, but	12 d.
<i>Mittimus. Certiorari.</i>	For the entering of every <i>Mittimus</i> , or <i>Certiorari</i> , and the return thereof.	4 s.
	But if the Return thereof exceed three sheets, then for every sheet so exceeding.	8 d.
<i>Prohibition.</i>	For entering of the Count in a Prohibition, and Pleadings thereupon after an appearance of the Defendant, not exceeding the length of three sheets.	2 s.
	And for every sheet above that length.	8 d.
<i>Attaint, false Judgments.</i>	For the entry of every Writ of Attaint, or false Judgment.	2 s.
	For the Entry of the Return thereof, and the Assignment of Errors, or false Oaths, not exceeding three sheets,	2 s.
	And for every sheet more.	8 d.
	For the entry of every sheet above three sheets of the Oath of every Witness examined to prove the Surmise in a Prohibition, or <i>Audita Querela</i> brought by an Infant, and the entry of the proofs <i>De morte & vita viri</i> in Dower, and the like Action and Suits.	8 d.
<i>Proof in a Prohibition.</i>		
<i>Audita querel. and Dower.</i>		
<i>Fees for Writs.</i>	<i>Fees due to the Prothonotaries for Writs, and the Entries of them amongst other dues.</i>	
<i>Prohibition.</i>	F Or every Writ of Prohibition, or Consultation, not exceeding four sheets.	2 s.
	For every sheet so exceeding.	4 d.
<i>Withernam.</i>	For every <i>Withernam</i> , return. <i>Habend.</i> after appearance,	
<i>Habeas Corp.</i>	second deliverance, Writs of Priviledge, <i>Habeas Corpus</i> , <i>Procedend.</i>	
<i>Sum. & al.</i>	<i>Certiorari</i> , Summons and Resummons, <i>Petit Cap.</i>	
<i>Brev. special.</i>	<i>Ven. fac.</i> <i>Scire fac.</i> <i>Elegit.</i> <i>Extent.</i> <i>Superſed.</i> <i>Subpœna</i> , Writ	

to the Bishop, Attachment in Ass. *Distring. Jur. Hab. Cor.*
 & *Distring. in Ass. & Attaint.* And the like, *Habere fac.*
possessionem, Writs of View, *Mittimus indemnitat. nostris*,
 and every other special Writ. 2 s.
 For the entring of every such Writ, which requireth an *Entr. of Writs*
 Entry, not exceeding four sheets. 2 s.
 And if more, for every sheet as abovesaid. 8 d.
 For every *Ca. sa. & fi. fa. Distring. ad deliberand.* and *Ca. sa. & fi. fa.*
 Writs to inquire of Damages in Trespass and Replevin. *Tessat. distr.*
 12 d. *Inqu. in tresp.*
 For Writs to inquire of Damages in Covenant, Eject- *Inqu. in casu.*
 ment, Actions upon the Case, and the like. 2 s.
 For every *Capias pro fine.* 6 d. *Cap. & Exig.*
 For the *Exigent* upon a *Capias pro fine.* 10 d. *pro fine.*
 For the Entry of the Return of every Writ in the Pro- *Intra return,*
 thonotaries Roll, other than the *Ca. sa.* returned *non est in-* *Brev.*
ven. and the *fi. fa.* returned *nulla habet bona*, whereupon
 further Process is awarded, not exceeding four sheets. 2 s.
 And if more, then for every sheet. 8 d.
 For the entring of every Writ of Priviledge; or *Habeas Bail sur Pri.*
Corpus, with the Bail for one Cause. 6 d. *Habeas Corp.*
 For every Name more. 2 s. *Committitur.*
 And for every other Cause. 2 s.
 For every Reversal upon an Outlawry, for default of *Reversal.*
 Proclamation, with one Name, and the Bail, or *Nolle pro-*
sequi. 4 s. 4 d.
 For every Name more. 2 s.
 For every *Ca. sa. & fi. fa.* after a *Devastavit.* 2 s. *Ca. sa. & fi. fa.*
 Whereof by allowance from the Prothonotaries the *post Devastav.*
 Clerk hath had 8 d.
 For every sheet exceeding four sheets of Writs to inquire *Inqu. in casu,*
 of Damages in Covenant, Ejectment, Actions upon the *&c.*
 Case, and the like Actions. 4 d.
 For the Writ of *Liberat.* or the like special Writs. 2 s. *Liberat.*
 Whereof by allowance from the Prothonotary, the
 Clerk hath had 8 d.
 For the entry of every such Writ, and the entry of every *Intra Brev.*
 other special Writ, which requireth an entry, not exceeding
 four sheets, 2 s.
 And for every sheet so exceeding, 4 d.
 For every *Distringas* in Detinue, 12 d. *Distringas.*
 Where-

<i>Distringas.</i>	Whereof the Clerk by allowance from the Prothonotary hath had	4 d.
<i>Inquir. in causa, &c.</i>	For Writs to inquire of Damages in Covenant, Ejectment, Actions upon the Case, and the like Actions, if they exceed not four sheets,	2 s.
	Whereof by allowance for the Prothonotary the Clerk hath had	4 d.
<i>Committitur.</i>	For the entry of every <i>Committitur</i> upon a <i>Habeas Corpus cum die & causa</i> , with one case returned, besides the entry of the Writ,	2 s.
	And for the entry of the Writ,	2 s.
	And for every other Cause returned,	2 s.
<i>Process sur Information.</i>	For the signing of all Process upon Information, excepting the first <i>Subpœna</i> ,	1 s. 4 d.

The Prothonotaries Clerks Fees.

<i>Copies.</i>	I N <i>primis</i> , For the Copies of common Declarations and Pleas, for every sheet containing 12 lines, and every line ten words,	4 d.
	For every sheet in real and mixt Actions, and Actions upon any Statute, and the like,	8 d.
<i>Draughts.</i>	For drawing of every special Declaration, and Plea, for every sheet,	8 d.
<i>Continuance.</i>	For every continuance every Term of every Writ, Issue, Imparance, Demur, of special Verdict, or Adjournment,	4 d.
<i>Exemplificat.</i>	For exemplifying every recovery with a single Voucher,	4 s. 8 d.
	For exemplifying of a double Voucher,	6 d.
	And for every Voucher more,	12 d.
	For exemplifying of any Record, not exceeding eight sheets,	5 s.
	And for every sheet more,	6 d.
<i>Drawing of Writs, and Entries thereof.</i>	For drawing of every extraordinary long Writ, after the rate of every sheet,	8 d.
	And for the entry thereof (if it so require) for every sheet,	4 d.
<i>Copy of Judgm. Entries in remembr.</i>	For the Copy of a Judgment, for every sheet,	8 d.
	For the Entry of every Writ, and the return thereof into the Prothonotaries Remembrances, for drawing up of a Judgment, if it exceed not three sheets,	6 d.
	And for every sheet after,	4 d.

For

- For entring of every common Rule into the Bill of Rules.
 Pleas, or common Remembrance, 4 d.
 For the entring and ingrossing every Summons for a recovery, and for the making of the Writ of Summons, 2 s. Recoveries.
 For the entry of every *Mittimus*, and *Dedimus potestatem*, for a recovery, 2 s 6 d. *Mittimus*.
 For the ingrossing of every *Nisi prius*, after the rate of *Ingras. Nisi prius*, every sheet, 4 d.
 For the entring of every *Testat. sur ca. sa. & fi. fa.* 4 d. *Intr. ca. sa. test.*
 For the search in every Term in the Prothonotaries Office, in the Docquets of Remembrances, 4 d. *Searches*.
 For issuing out of the Court-money, of the party receiving it, 1 d. in l. *Court-money*.
 For the making of every long Writ, as Prohibition, and the like. for every sheet, 4 d. *Writs*.
 For the prosecuting and issuing out of Process for the King, for to bring in the Party for to make Fine for his Contempt, until the Party render himself, or be outlawed, besides the Fees of the Court, 3 s. 4 d. *Cap. pro fine*.
 For the Copies of Suggestion to grant a Prohibition, for every sheet, 8 d. *Copy suggest.*
 For drawing of every Surmise to have a Prohibition, special Verdict, and the like, for every sheet, 8 d. *Tract. Prohib. Special Verd.*

The Prothonotaries Clerks Fees for Informations only.

- For ingrossing of every Information, 8 d. *Information*.
 For a Copy of the said Information, if it amount to the number of five sheets of Paper, or upwards, 3 s. 4 d.
 If it be under the number of five sheets, then for every sheet, 8 d.
 For the making of every *Capias pro fine*, upon an Information, 6 d.
 For the entring of a general Issue upon the Roll, where the Information was first entred in the Term it was first exhibited, 8 d.
 For the Registring of every Licence to compound in the Office-book. 4 d.

An ancient Fee due to the second Prothonotaries Clerk only.

Fines. For recording of every Fine acknowledged at the Bar by Writ, and moved by a Serjeant. 4 d.

Secondaries Fees. Fees due to the Secondaries of the Prothonotaries in their several Offices.

Cop. of Rules. Drawing and entr. of Rules. For the Copy of every common Rule, 4 d.
For taking a Note of the Rule of the Judges in Court, upon a Motion of a Serjeant, for drawing the same Rule in Paper in *Latin* words, and entring it into the Bill of Pleas, and the Copy thereof, the draught not exceeding six lines in Paper. 8 d.

If the Rule exceed six lines then 12 d.
Wag. in Law. For every Wager in Law, in Court, or Non-suit of the Plaintiff, upon a Wager of Law, 12 d.

Committitur. For the Entry of the *Committitur* of any Defendant to the Fleet, in Execution of any Judgment, or otherwise in Court, and for making a Copy thereof for the Warden of the Fleet, containing the cause of the Commitment, 12 d.

For the entring of every Commitment to the Fleet, of any Person yielding himself in discharge of his Bail, and for the like Copy, 12 d.

Privy Verdict. For attending the Judge from his Chamber to *Westminster*, to take a Privy Verdict tried at Bar, 3 s. 4 d.

Read. Record. For reading the Record of a Demurrer in Court, or Verdict, 12 d.

Bails. For taking Bail in Court, 12 d.

Admission to Guardian. For entring of an admission of an Infant to his *Prochein Amy*, or Guardian, in the Prothonotaries Remembrance, 12 d.

Copies of Issue and Jurors Names. For the Copy of the Issue and Jurors Names, to be delivered to the Jury upon any Trial at Bar, 12 d.

For reading of Evidences upon Trials at the Bar of each Party, Plaintiff, and Defendant, 3 s. 4 d.

Satisfaction. For entring of every Satisfaction by special Warrant, 8 d.

Record. Disc. *Recordatur*, and Discontinuance, 8 d.
For

For every Satisfaction by general Warrant, 4 d. Satisfaction.
 For entry of every Will, or Letters of Administration,
 to enable an Executor or Administrator to acknowledge
 satisfaction, and the Entry of the satisfaction, 12 d.
 For every Copy of Interrogatories, Depositions of Per- Interrogator.
 sons examined upon Interrogatories, by Order of the
 Court, for every sheet, 8 d.

Per Breve de Privato Sigillo.

Wolsey.

P 4

Fees

Fees of the Kings Bench.

A Note of Fees due and time out of mind used to be paid to the Prothonotaries, or Chief Clerks of the Court of Kings Bench, and to their Clerks, and the same was presented upon Oath by vertue of a Commission in Apr. 1630. by twenty nine Attorneys of the same Court, and hitherto taken.

Writs.

For a *Latitat.*

Super sedens.

Exigent in Appeal.

Distring. in Attaint.

Habeas Corpus.

Certiorari.

Procedendo.

Elegit.

Subpœna.

Return. habend.

Withernam.

Second Deliverance.

Restitution.

Scire facias.

Diminution.

Libello habend.

Prohibition.

Consultation.

Propriitate proban.

Distring. in Detinuit.

Inquir. de valore.

Resum.

Reattachment.

Ve. fa. defend. in Audia querela.

Habere fac. seisinam, & possession.

Respons. in Attaint.

Vend. Expon.

Ere. Expo.

Mittimus.

5 s. 1 d.

All these are accountable for to the Prothonotaries, viz. for every one 2 s. out of which they allow their Clerks for writing, 4 d.

Venire facias.

Distring. Fur.

Ali. & plur cap.

Ca. fa

Inquir. de Damnis.

Habeas Corpus.

Sur. Cepi corpus.

Averm. vers. vic.

Fieri facias.

Test. fi. fa. & ca. fa.

Dist. nuper vic.

Non omittas.

For every of these besides the Seal, 6 d. And for every *Deliberat. de Record*, 4 d. And for the *jurat* of the *Dist.* of *Nisi prius*,

prima, 4. d. But all these have been always to the Prothonotaries Clerks, and are not accounted for to the Prothonotaries.

In every Action wherein the Plaintiff recovereth Damages to the value of 13 l. 6 s. 8 d. he paid 12 d. in the Pound for Damage-clear, when the Judgment is signed.

Kings Bench Fees for Entries.

F Or every Deed, how short soever,	2 s.
For every Action of Trespafs,	1 s.
For every Not guilty,	1 s.
For every Justification in Trespafs,	2 s.
For every Replication,	2 s. 8 d.
For every Action of the Case, not above three sheets,	2 s.
For every general Issue to it,	1 s.
For every <i>Ejffione firma</i> ,	2 s.
For every Declaration in Appeal,	2 s.
For every general Issue therein,	2 s.
For every Recogn. <i>Sur. Hab. Corp.</i> for every Defendant severally,	2 s.
For every Deposition upon all Prohibitions,	3 s.
For every Judgment by circumst.	4 s.
Out of which the Clerk is allowed,	8 d.
For every other Judgment,	2 s.
Whereof the Clerk is allowed,	4 d.
For every Dismission,	2 s.
For every Commitment in Execution,	2 s.
For every Satisfaction,	3 s.
For every Appearance recorded,	2 s.
For every <i>Non prof.</i>	2 s.
For every Action of Debt, Detinue, or Trespafs,	1 s.
For every general Issue therein,	1 s.
For every Condition performed,	2 s.
For every Replication to it,	1 s.
For a Writing denied, and keeping of the Writing,	2 s.
For every Justification in Battery,	2 s.
For every <i>Audita Querela</i> , how short soever,	2 s.
For every special Impar lance,	2 s.
For every general Impar lance upon the Plea-roll	1 s.
For every default upon Record,	2 s.
For	For

For such a Suggestion upon a Prohibition, how short soever,	2 s.
For every Recognizance to it,	2 s.
For every Writ of Error, how short soever,	3 s. 4 d.
For entring the Errors,	2 s.
For entring <i>in nullo est Errat.</i>	2 s.
For every Diminution,	2 s.
For abatement of a Writ of Error, and license to sue a new one	2 s.
For entring of the same,	2 s.
For every Recognizance single, or with condition,	2 s.
For every Inrolment whatsoever, longer than three sheets,	6 s. 8 d.
After the rate, for a Roll on both sides,	6 s. 8 d.
For half a Roll,	3 s. 4 d.
For every Bail by Recognizance,	2 s. 6 d.

Kings Bench Fees of Clerks and Attorneys.

For their fees in every Cause for every Term,	3 s. 4 d.
For their fees at every <i>Nisi prius</i> , and inquiry of damages,	3 s. 4 d.
For their fees in every appeal & Affize, every term,	6 s. 8 d.
For drawing every Declaration not exceeding a sheet,	1 s.
For every sheet above one,	8 d.
For drawing every Action on the Case, and Covenant, how short soever,	3 s. 4 d.
For drawing every Ejectment,	2 s.
For every sheet ingrossed in Parchment,	4 s.
For drawing a Surmise upon a Prohibition, every sheet,	1 s.
For drawing special Pleadings, every sheet,	8 d.
For Copies of Declarations, Pleas, and other things, every sheet,	4 d.
For continuing every Cause every Term,	4 d.
For entring all things above three sheets, every sheet,	8 d.
For every Judgement by circumst,	5 s.
For making every Bail,	4 d.
For making every Bail of <i>Middlesex</i> , <i>Distring. nuper vic.</i> and <i>Hab. Corp. per praeceptum</i> thereupon,	8 d.
For making every <i>Hab. corp. ad fac. Hab. corp. cum privileg. Certiorari, Proceadend. Elegit & haberi fac. possessionem</i> , besides 4 d. allowed by the Prothonotary,	1 s. 8 d.

For

For every sheet in a Writ of Inquiry, Prohibition, Consultation, &c. 4 d.

For entring every *Scire facias*, 1 s.

Fees received by the Secondary.

For taking the acknowledgment of a Deed in Court, 1 s.

For signing every Judgment by confession, *nihil dicis*, verdict & demurrer.

Also for acknowledgment of every Deed for every Judgment pronounced in open Court, every Rule to alter a Vint, for every Rule for a Prohibition, Consultation, Attachment, &c. he receiveth for the Poors Box, 1 s.

For allowance for a Writ of Error, *coram nobis resident*, 2 s.

Whereof to the Box, 1 s.

For an allowance of an *Audita Querela*, 2 s.

Whereof to the Box, 1 s.

Kings Bench Fees.

For every common Bail, 1 s. 2 d.

For a special Bail upon a *Habeas Corpus*, *Certiorari*, or Attachment, 4 s. 1 d.

Fees received by the Secondary for the Judges.

For every *Habeas Corpus ad fac. & recipiend.* 4 s.

For every *Procedendo*, 4 s.

For every *Certiorari* to remove a Foreign Attachment, 4 s.

For a *Procedendo* thereupon, 4 s.

For every *Habeas Corpus cum privit.* 3 s.

Out of every *Latitat* they have 4 d.

Fees received by the Judges Clerk.

For every Warrant for *Hab. corp* or any thing to which the Judge putteth his Hand in the Term time, 1 s.

And in the Vacation, 2 s.

For the acknowledgment of a Deed which he saith is for his Master, 6 s. 8 d.

And for his own fee, 2 s.

For

The Compleat Attorney.

For taking the Deposition of Witnesses upon a Suggestion
for a Prohibition for every Witness, 6 s. 8 d.
And for his own Fee for every Witness, 2 s.

Fees paid to the Clerk of the Papers.

FOr copying every special Plea, every sheet, 4 d.
For making the Paper-book, either Issue or Demurrer,
every sheet, 8 d.
For entring into his Book every Record to be read in
Court, 1 s.
For entring into his Book every Cause to hear Counsel on
both sides, 1 s.
For entring every Trial at Bar, 1 s.

The Keeper of the Postea,

HAth for the receiving, marking, keeping, and delivery
of every *Postea*, 4 d.

The Keeper of the Files of Declarations.

HAth for the filing, pying, and shewing the Files of eve-
ry Clerk for every Term, 2 s.

Fees paid to the Clerks of the Rules.

FOr entring every Rule, except general Rules for answer, 4 d.
For the Copy of every Rule, 4 d.
For every general Rule for answer, being above three, 3 s.
For every Rule given in Court, with a Copy for a Prohi-
bition, or Consultation, he taketh 12 d. and the due is but 8 d.
which hath been taken above 25 years, 8 d.
For every Rule with a Copy given in Court the last day of
the Term, he taketh 12 d. whereas the due is but 8 d. which
hath been taken this two or three years, 8 d.
For every Copy of Rule after the continuance day, he ta-
keth 8 d. whereas the due is but 4 d. which hath been taken
these two or three years, 4 d.
All such *Affidavits* as are read in Court, he claimeth these
two years, or thereabouts, to have the keeping of them, and
taketh

taketh for Copies both of Plaintiff and Defendant at his own discretion, which formerly hath not been.

Dogget-maker.

THe Secondaries Clerk, for making and keeping the Remembrances for Entries, &c. hath of every Clerk, every Term, 8 d.

Keepers of the Bails.

FOr entering the common Bails into Parchment Rolls, every Term, every Clerk of the Office giveth what he pleaseth.

Keepers of the Rolls of Writs.

FOr the carrying of Rolls of the Writs to the Hall and the Office, he hath of every Clerk every Term what he pleaseth.

Fees paid to the Custos Brevium and his Clerk.

FOr every Record of *Nisi prius* in a short Action of Trespass, 4 s. 6 d.
 For every other Record, how short soever, 5 s.
 For every full Prefs of *Nisi prius* or *Mittimus*, 6 s.
 For every *Nisi prius* out of the Crown side, 6 s. 8 d.
 For every full Prefs there, 1 s. 8 d.
 For every *Nisi prius* upon an Indictment for murder, for every Name that pleadeth to Issue, 6 s. 8 d.
 For every short Exemplification in Trespass, 10 s.
 For every Exemplification containing a large Skin, 1 l.
 For the like in the Crown side, 2 l.
 For every Exemplification in *Ejectione firma*, 13 s. 4 d.
 For filing a Writ being a *Post diem* upon the *Angl.* 4 d.
 For all *Post Terminum* at any time after the first week ended in the second Term, 1 s. 8 d.
 For every Warrant of Attorney in Murder, 1 s.
 For every Sheriffs Warrant, 8 d.
 For every other Warrant of Attorney, 4 d.
 For every search for a Roll for ten years last past, 6 d.
 For every search above ten years last past, 3 s. 4 d.
 For

The Compleat Attorney.

For every search for Rolls for the six last Terms,	1 d.
For search for every File of Declaration, Bail, Judicial, and other Writs, after ten years,	1 s. 4 d.
For the Copy of every sheet between party and party,	4 d.
For a Copy of a Deed inrolled, for every sheet,	8 d.
For the File of an <i>Angl.</i> for every Term after one,	4 d.
For the Copies of every Writ of Appeal, every sheet,	8 d.

Fees now paid to the Custos Brevium his Clerks.

F Or writing every <i>Nisi prius</i> , or <i>Mittimus</i> , being but one press,	1 s. 6 d.
For every press more than one,	1 s.
For writing every Exemplification in Trespass or Ejectment,	3 s. 4 d.
For writing every large skin of Parchment exemplified,	6 s. 8 d.
The Fees for writing every <i>Nisi prius</i> , or <i>Mittimus</i> , were uncertain, until about <i>Anno 2 Jac.</i> and then it was ordered by the Judges, That the Clerks should have for writing of the first Press 1 s. 6 d. and if more, then every other Press 12 d. And every full Press to contain 60 lines.	

Fees claimed by the Cryer and Porter.

As Cryer.

F Or calling a Jury,	2 s.
For every Oath given in Court,	4 d.
For taking a Privy Verdict,	4 s.
For every Argument in Law,	2 s.
For every Wager of Law,	2 s.
For every Admission to Guardian,	6 d.
For a Bail taken at the Bar,	2 s.
For calling a Nonsuit,	4 d.
For calling the Record,	1 s.
For calling a Default,	1 s.
When a Pardon is pleaded,	2 s.

As Porter.

F Or every Trial at Bar,	5 s.
For every Privy Verdict,	2 s.
For summoning the Wager-men,	3 s.
	For

For a Bail taken at Bar,	2 s.
For a Record called,	6 d.
For a Default called,	6 d.
For a Pardon pleaded,	2 s.
For the discharge of a <i>Rescous</i> ,	4 d.
For a Bail taken in Court,	6 d.

Of all these Fees mentioned, and claimed by the Cryer, and Porter, these following have been paid as due, during the time of our knowledge.

As Cryer.

F Or calling a Jury,	1 s.
For swearing every Witnes,	4 d.
For a Wager of Law,	1 s.
For a Nonsuit,	1 s.
For a Default of a Record,	1 s.
For a <i>Defect de lege</i> ,	1 s.

As Porter.

F Or summoning the Wager-men,	3 s.
Also the Porter receiveth more for the Wager-men where the Defendant wargeth his Law, or is ready to wage it,	1 s.

Fees received by the Clerk of the Errors immediately after the Statute of 27 Eliz.

F Or the Lord Chief Justices Fee for the allowance,	17 s. 4 d.
For the Receipt,	5 s.
For the Return,	2 s.
For the Certificate of the first Press,	6 s.
For writing the first Press,	2 s.
For a <i>Superfedeas</i> ,	2 s. 7 d.

These Fees amounting to 35 s. 3 d. were paid upon the allowance of the Writ, and for the Superfedeas.

F Or the certifying of the Record for every Press, besides the first,	6 s.
	For

For writing of every Prefs after the first,	1 s.
For the Roll,	1 s.
For making <i>Non prof.</i> upon the Roll,	5 s.

Also immediately after the making of the Statute of An 2 Jac. the Fees taken for the Bail were as followeth upon a Writ of Error.

T O the Prothonotary for the Recognizance,	2 s.
To the Judges Clerk,	2 s.

Fees upon a Writ of Error.

F Or making the Bail;	4 d.
For drawing and entring the Recognizance,	4 s.
Now, and for the space of thirty years last past, he hath taken upon the Receipt of every Writ of Error, and <i>Super sedas</i> in a gross sum,	2 l. 6 s. 8 d.
Also for certifying every Prefs besides the last,	6 s. 8 d.
For writing every Prefs besides the first,	2 s.
For every <i>Super sedas</i> besides the first, with the Seal,	9 s. 3 d.

These last mentioned were set down by Sir John Popham, late Lord Chief Justice, Ex relatione Ed. Pag. cler. Error, but we do not certifie it upon our own knowledge.

A Lso he taketh for every Bail in gross sum, 9 s. 4 d.
For every Writ of Error, *Tam in redditione Judicii quam in adjudicatione executionis*, he taketh double Fees.

The Marshals Fees, as they were certified by Sir Thomas Knowls Knight, sometimes Marshal of the Kings Bench.

I n <i>primis</i> , For an enlargement of every Prisoner, which is termed his Admission Fee,	10 s.
Also he demandeth of every Prisoner upon his enlargement,	
a Fine, for not wearing of Irons.	
For Execution in every Pound,	3 d.
For Actions in every Pound,	1 d. ob.
The Marshal taketh for every dismission, more than the former Fee of ten shillings,	8 s. 8 d.

The

The Deputy Marshal, and Marshal's men, take for every Prisoner that is committed in Court, 5 s. 6 d.
And for every prisoner committed from the Judges Chamber, 2 s. 6 d.
The Deputy Marshal taketh for the allowance of every *Habeas Corpus*. 2 s. 6 d.

The Clerk of the Fines.

T Here was an Office invented and erected about 6 *Jacobi*, whereby is taken upon the filing of every Declaration in debt, where the debt is above 40 l. and not above 100 marks, 3 s. 4 d. And above 100 marks, and not above 100 l. 5 s. and after the same rate, and also in every Action on the Case, and Trespas for goods, where the Damages are laid above 40 l. the like rates; so that the Plaintiff or Defendant be not a person privileged, nor the Defendant in *Custodia Maris*. whereas before 6 *Jacobi*, in all our memories, no such moneys were paid, or demanded.

Fees for Tryals at Barr, taken by several Officers.

T He Cryer for calling the Jury, 2 s.
For swearing every Witness, 4 d.
The Porter for keeping the door, 5 s.
The Cryer for a Non-suit, 2 s.
The Deputy Marshal, 2 s.
The Tipstaves, or Marshals men, for a Verdict, *sedente Curia*, 8 s. 6 d.
If the Jury lie together all night, 17 s. 8 d.
The Judges Foot-cloth-men, 12 d. a piece, 4 d.
The Secondary receives for a Verdict in Court, 2 s.
And for a privy Verdict, 13 s. 4 d. which he saith is thus divided, *viz.* The Judge that taketh the Verdict, 6 s. 8 d.
To the Secondary, 2 s. and the rest, being 4 s. 8 d. among other Officers that attend.

Of all the Fees mentioned, we present these following to be due.

T O the Cryer for calling the Jury,	1 s.
For swearing every Witness,	4 d.
For calling a Non-suit,	1 s.
To the Deputy Marshal,	2 s.
To the Porter for keeping the door,	1 s.
To the Secondary for taking a Verdict in Court,	2 s.
To him for a privy Verdict,	13 s. 4 d.
And now they take no other Fees then these last mentioned.	

We pay unto the Crown Office for estreating every amercement. 1 s.

Also there is paid to the Secondaries Clerk by every one of the Pronotaries Clerks every Term that he faileth to bring in his Rolls within 24 dayes next following, after Trinity, Michaelmas, and Hillary Terms respectively, and within ten dayes next after Easter Term, 12 d. Whereas formerly they had time until the Eshoin day of the next Term, to bring them in without paying any Fee.

Also therre is paid to the Secondaries Clerk for the filing of every common bail, after six days after every Term over and above the fee, 4 d.

The Table of which several payments last mentioned, is remaining in the Kings-Bench Office.

Fees due and received by Philizers.

F OR every <i>Cap. Al. Plur. Exigent, Proclam. & Distrin.</i> in Trespass,	6 d.
For every Exigent and Proclamation in Replevin,	6 d.
For every <i>Pone, Cap. Al. Plur. Testat.</i> in Replevin,	6 d.
For every <i>Superfedeas</i> upon the mean Process aforesaid,	2 s.
For every <i>Cap. Al. Plur. Testat.</i> and <i>Exigent in Transf. sup. casum,</i>	
<i>Action on a Statute, Rap. Custodie Transf. contra formam ordinationis,</i> Ejectments, and such special Writs,	1 s.
For Proclamations thereupon,	1 s.
For the <i>Distringas</i> thereupon,	1 s.
For every <i>Cap. Al. and Plur.</i> in an appeal of <i>Mayhem,</i>	1 s.
For	

For every Name in every <i>Cap. Al. & Plur.</i> in an appeal of Murther,	2 s.
For every Proclamation in every appeal,	2 s.
For every general <i>Cap. utl. & deliberatur de recordo</i> ,	10 d.
For every special <i>Cap. utl. & deliberatur de recordo</i> ,	2 s. 4 d.
For every Writ of <i>Withernam</i> ; second deliverance, and <i>return Habend.</i> before <i>Avowry</i> ,	2 s.
For every <i>Venire facias</i> ,	6 d.
For every <i>Distring. jur. deliberatur de recordo, & jur. Nisi prius</i> ,	18 s. 2 d.
For every <i>Subpœna</i> upon Issue by Original,	2 s.
For Entry of Declarations in trespass by Original,	2 s.
For Entry not guilty thereunto,	1 s.
For entering every Ejectment and Action upon the Case, not above three sheets,	2 s.
If longer, for every sheet,	8 d.
For every general Impar lance,	4 d.
For every special Impar lance,	2 s.
Copies of Writs of Attaint, before Judgment <i>per sheet</i> ,	8 d.

Fees due upon Trials at Guild-Hall, to the Officers of the Court.

T O the Clerk that reads the Record and Evidence,	1 s.
To the Associate	1 s.
For every default,	2 s. 4 d.
To the Cryer,	1 s.
For swearing every Witness,	4 d.
The Marshal,	2 s.
The Foot-cloth,	1 s.
The Green-cloth,	1 s. 6 d.
The Door-keeper,	1 s.
The Hall-keeper,	1 s.
The Jury men,	8 s.
Oyer-men, every one,	4 d.
For summoning and keeping the Jury,	4 s. 4 d.
Lights,	1 s.
Barr-keeper,	1 s.
Return of the Postea,	2 s.
Also the Associate taketh in every cause where the Plain-tiffs	

tiffs Attorney is not present ; and of every Defendant which appeareth and hath not his Attorney in Court, for a Warrant of Attorney.

The *Exchequer* is an antient Court, and in it are the Kings Receipts, and his Yearly Revenues recorded and kept : It is his Majesties Common Treasury, and is for Justice between the King and his Subjects.

The Judges in this Court, are the Lord High-Treasurer of England.

The Chancellor of the *Exchequer*.

The Lord Chief Baron.

Three other Barons of the Coif.

With whom also sits another Baron ; but he hath no Voice in Court, as to any Business, other then taking Account of Sheriffs, Auditors, Bayliffs, and Receivers, &c.

The Lord Treasurer is the keeper of the King's Treasures, and many Officers are at his appoyntment, as well within the *Tower* and *Exchequer*, as elsewhere : As Auditors, Tellers, Receivers, &c.

The Chancellor is the under-Treasurer, and is Governour of this Court under the High-Treasurer ; and many Officers are at his Commandment.

The Chief Baron is the Judge in such Cases incident to this Court ; and the other Barons are his Assistants. The Attorney-General is to defend the King's Right ; To peruse all Grants, & particular Suits and Causes handled in this Court.

The Officers are,

Two Remembrancers,

Clerk of the Pipe,

Clerk of the First Fruits and Tenths.

The Remembrancers are those which keep the Records in the *Exchequer* between the King and his Subjects, and enter the Rules and Orders there made ; the one of those is for the King, and the other for the Treasurer.

Clerks of the Pipe are those which make Leases upon particulars, and do receive the Sheriffs Account : They receive also the Bonds, Tallies, and other Assurances.

In the Office of the first-fruits, are received all first-fruits due to His Majesty by Bishops, Deans, and all Ecclesiastical persons, answerable by order of Law.

The Officers are Auditors, Tellers, Collectors', Rent-gatherers, Tally-makers, the Clerk of the Estreats, forreign Opposer, Clerk of the Office of Pleas in his Office: The Clerks there are several Attorneys.

The Contröler of the Pipe.

Chamberlain, Usher.

The Matters of this Court are all penal punishments, all Intrusions, Alienations without License, penal forfeitures upon Popular Actions; a popular Action is, wherein a part is given to the Informer, the rest to the King. Of these, see the whole Body of the Statutes at large; as of *Rastal's* Collections.

In this Court are handled all Payments, Receipts, and Expences of the King's Revenues.

The usual Process here is a *Subpœna*, or a Messenger to call the Party.

This Court hath in it a diverse way of Proceeding;

As first, There is a course of proceeding suitable in most things to the Common-Law proceedings in other Courts, and that is, of their (*Quo minus*) out of the Office of Pleas; which Writ was anciently to be granted to such a party onely, who was either Tenant, or Debtor, or some ways accountant to the King; and therefore the end of the Writ concludes, that he is for default of the Defendant giving him satisfaction, less able to satisfy the King; but at this day, the practice is grown general in all Cases almost, but more especially in *Wales*, where no Writ out of the Kings Bench, or Common-Pleas lies, save onely a *Capias utlagatum*; and these Writs which so far relate together, as that they both pretend to be by way of Prerogative for the King: The Rules formerly given for proceedings at Common-Law in the Kings-Bench, &c. will serve you for this.

The Exchequer Chamber.

THIS Court is, as it were, the Chancery of the Exchequer, in which sits the chief Judg, or Justicer, the Lord Treasurer, and Chancellor of the Exchequer, being assisted with the Lord chief Baron, and the Barons of the Coif; and the proceedings had there before them, do much resemble the proceeding in the Chancery; and therefore I refer you to what you will find following, of the proceedings in the Court

of Chancery, which may be some guide to you in this. The whole practice and proceedings which are generally in the use at the Exchequer Bar, do relate for the most part to the two Remembrancers of the Court, which, as I told you before, were the Kings Remembrancer, and the Lord Treasurers Remembrancer.

There hath been anciently very much business, and that very various, in the Kings Remembrancers Office, relating to the Debtors, Tenants, Farmers, Receivers, Accomptants, Bayliffs, and Sheriffs, for Debts or Duties due to the King, &c.

In the Treasurers Remembrancers Office were wont to be all Licenses of Alienation pleaded, and all Process to issue out for the Fines not paid unto them; and also, all Process for not payment of respite of Homage, &c. And these several Offices do in many things also follow the practice of the Common-Law.

The differences between this Court, and the Courts of Kings-Bench, and Common-Pleas, in point of appearance at the beginning of a Suit, take as follows:

In the Exchequer-Chamber, the Process upon *English Bill* is *Subpoena*, Attachment, Proclamation, and Commission of Rebellion.

If the Defendant appear, and no Bill be exhibited within four days after the return of the Process, the Defendant may be dismissed with Costs.

After the Bill is exhibited, the Defendant hath eight days after his appearance to answer; if he answer not by that time, a Rule of four days more is to be given; and if he do not answer by that time, Process of Attachment may be awarded against him for his contempt.

If the Defendant demur, or put in an insufficient answer, the Plaintiff may put in his Exceptions to the said Answer, and move to have the Bill, Answer, and Exceptions, or Demurrer set down to be read in Court; and upon arguing thereof, the Court give their opinions, Whether such Answer or Demurrer be good or not, and award Costs accordingly; and if the Answer be adjudged insufficient, or the Demurrer be over-ruled, then the Court doth order, that the Defendant shall put in a further Answer.

If a Bill be exhibited against a Peer of the Realm, there must be a Letter directed to him under the Hands of two of the

the Barons, requiring his appearance; if he do not appear, then Process of *Subpœna*, and after a *Distingas*, or Attachment.

If the Bill be against a Corporation, Process of *Distingas* must be made against them, their answer is without Oath.

If a Bill or Petition be exhibited against the King, the Plaintiff must attend the King's Attorney with a Copy of it, and procure him to answer it, which is without Oath.

When the Defendant hath answered, the Plaintiff may go to hearing upon Bill and Answer, if he will; if he do reply to the Answer, he must serve the Defendant with a *Subpœna* to rejoyne, upon Affidavit made thereof in the Term time; if the Defendant do not rejoyne, and joyn in Commission for examination of Witnesses, within four days after the end of the Term, the Plaintiff may have a Commission *ex parte* to examine his Witnesses.

After Process served to rejoyne, and Affidavit made, as aforesaid, both sides may examine Witnesses in Court, if they will, giving the Names of their Witnesses each to other, or to their Attornies in Court, in convenient time, before their examination.

Where the Plaintiff hath examined his Witnesses, he may move for Publication, and a Rule is given ordinarily of a week in Term; and if no cause be shewed according to the Rule, then Publication to pass, and the cause to be set down for a hearing.

When the cause is set down to be heard, the Plaintiff must serve the Defendant with Process of *Subpœna* to hear Judgment: And if at the day of hearing the Defendant do not appear, upon Oath made of the service of the said *Subpœna*, the Court will cause the Defendants answer to be read, and so proceed unto the Plaintiffs proofs; but the Court doth usually in such case, give the Defendant a day to shew cause why a Decree should not be made against him.

If the Defendant tend the hearing, and the Plaintiff make default, the Defendant is dismissed with Costs. For breach of Decrees, and other great Contempts, the Court doth award Attachments, or a Messenger, or a Serjeant at Arms, as the cause requireth: And when the Defendant is brought in, he is committed to the Fleet, or puts in security to attend, until he be examined upon Interrogatories, and licensed by the Court to depart; and if he deny the Contempt, the prosecutor may examine

examine Witnesses to prove it either in Court, or by Commission: If by Commission, the Defendant may joyn to see an indifferent examination, but not to examine, unless the Court order it; and if the contempt be proved, the Court doth punish it with imprisonment, fine and costs, to the Prosecutor: If it be not proved, the defendant is to be dismissed with costs. In case of ordinary contempts for not appearing, or not answering, the costs are ordinary, viz. for every Attachment 10 s. For every Commission of Rebellion, 3 l. 6 s. 8 d. which is to be paid before the contempt be discharged. In case where any Bill of costs is to be taxed, the Attorney is to see it before it be tendred to the Baron to be taxed,

The Fees in Court upon the Proceedings by English Bill; together with some other Fees.

F OR a Subpena,	2 s. 6 d.
For an Attachment,	2 s. 6 d.
For a Proclamation and Attachment,	2 s. 6 d.
For a Commission of Rebellion; to take an Answer, or to examine Witnesses,	18 s. 8 d.
For the appearance of every person,	4 d.
Copies of Bills, Answers, &c. by the leaf,	8 d.
For ingrossments by the leaf,	8 d.
The Attorneys Fee for every Term,	3 s. 4 d.
For all Inrolments for every Roll,	13 s. 4 d.
For every special Writ, viz. Writ of Priviledg, Injunction, Superjedeas, Extent, Scire facias, Fieri facias, Certiorari, &c.	7 s. 10 d.
For every Writ of Venire facias, and Writ of Attendance,	2 s. 6 d.
For every Distingas jur.	4 s.
For every Rule to plead or answer,	1 s.
Filing each Bill,	2 s.
For entering and Inrolling a Recognizance,	5 s. 8 d.
Drawing of Orders, Pleas, &c. by the leaf,	1 s.
To the Baron for allowing every Bill,	2 s.
To the Baron for signing every common Order,	2 s.
For signing a Decree to each Baron,	6 s. 8 d.
To each of their Clerks,	2 s.
For every Affidavit sworn before him,	1 s.
	For

For every Deed acknowledged before him,	6 s.
To his Clerk,	2 s.
For every Bill of costs taxed,	7 s.

Where the Under-Sheriff is to pass his Account in the Exchequer, the charge is as follows; some difference there may be, as the Account may lie, but not much.

First, for the Tally upon payment of proffers,	2 s. 8 d.
For the entry of the same Tally,	1 s. 4 d.
Where the Sheriff is dead, for the <i>Diem clausit extremum</i> whereby upon account, Execution is to be returned,	13 s. 4 d.
For the Warrant of Attorney,	1 s.
For the entry thereof,	8 d.
For the Ushers Fees, and poor man's Box,	13 s. 4 d.
To the Contröller of the Pipe,	16 s. 8 d.
To him more, in regard of, &c.	3 s. 4 d.
To the Clerk to the Contröller for Summons, in regard of, &c.	5 s.
To the Clerk of the Pipe in part of his Fee,	1 l. 0 0
To the Lord Treasurers Remembrancer,	13 s. 4 d.
To the forreign Opposer for charging of the green Wax, and making the Scrowl thereof,	1 l. 6 s. 8 d.
To him for allowance of the wages of the Justices of the Peace,	18 s.
To the Clerk of the Eſtreats for the Portage of } Books,	As you can agree.
To the under Clerk of the Pipe for the like,	
For the President of the Forreign Account,	
The Fee in regard of the Justices of Assize for their Diet	10 l.
To the Attorney for the Entry thereof, and other Petitions,	2 l.
To the said Attorney for his ordinary Fee for the whole year, to receive the Writs and Precepts, &c.	1 l. 6 s. 8 d.
To him in regard of, &c. For every Term during the account till finished,	3 s. 4 d.

To

The Compleat Attorney.

To his Clerk in regard of, &c.	10 s.
The Copies of the Sheriffs Seifures, according to the number of them,	
The old Seifures, for each,	1 s.
The new Seifures, for each	1 s.
To the Clerk in regard of, &c.	3 s. 4 d.
To the Remembrancers Office, for each thereof, and for joyn- ing the tallies of Professors,	3 s. 4 d.
On the Lord Treasurers Remembrancers side for the like,	3 s. 4 d.
For allowance of the same tallies of payments of money in the Receit of the Exchequer,	1 s. 4 d.
For the joyning of the same.	
For allowance of the same	1 s.
For every day that is given to the Sheriff, in respect of his Accounts,	6 s. 8 d.
For the Entry thereof	2 s.
To the Usher for Proclamation, when the Sheriff is said to be cast out of Court,	2 s. 6 d.
For the <i>Quietus est</i> , the making and allowing of the same,	1 l.
For the Baron, for his <i>Fees</i> , for taking and allowing of the forreign Accounts,	6 s 8 d.
To the same Baron for examining the Sheriffs Schedule,	6 s 8 d.

*The ordinary charge of passing another Ac-
count.*

F irst, for the Delivery and Receit of three Certificates,	1 s.
For delivery of the Kings part of the Books of Extent to the Auditor,	6 d.
To the Auditors man for a bag,	6 d.
For a Warrant of Attorney,	8 d.
To the Teller for receiving of the Money, and making a Bill thereof,	4 d.
To the Auditors man for allowing the Certificate,	1 s. 6 d.
To the Auditors man for ingrossing the Accompts,	4 s.
To the Barons man for receiving and allowing the Warrant of Attorney,	2 s.
	For

For entring the Accompts on the Kings Remembrancers side,

1 s.

For the like Entry with M.

1 s.

For joyning of their two Tallies,

8 d.

For the *Quierus est*,

3 s. 4 d.

For entring the *Quierus est*,

2 s.

For the Attorneys Fee.

3 s. 4 d.

Thus much shall suffice to have spoken of the Exchequer, and his Proceedings, and Fees relating to the Sheriffs.

In the next place take the Fees of the Sheriffs themselves, as in the Execution of their Office.

In *primis*, For the return of a *Nichil*, or *Non est inventus*,

4 d.

But in *Scire facias* they take,

1 s.

For making a Warrant upon ordinary Process, if it be directed to the ordinary Bayliffs, then for every name,

4 d.

In many Counties, they take far more, in some 16 d. in some more.

If the Warrant be directed to a special Bayliff, or Bayliffs, then for every Name,

2 s.

For the Arrest of every Defendant,

1 s.

This should be paid by the Plaintiff.

For making the Bond of appearance, wherein the Defendant with his Sureties, is bound to appear in Court, at the day of the return of the Writ,

4 d.

They take 12 d. and more in some places.

For the return of a *Cepi corpus*,

4 d.

For the return of an *Exigent*,

1 s.

For the return of a Proclamation,

1 s.

For the return of a *Venire facias*,

1 s.

They now take in most places,

2 s.

For the return of a *Habeas corpus* or *Distingas*,

2 s. 4 d.

For a Replevin, either in the County or otherwise

2 s.

For the return of a *Recordari*,

2 s.

For the return of an *Aedas ad Curiam*,

2 s.

For the return of a *Distring. nuper Vicecomitem*,

1 s.

For

For the allowance of a *Supersedeas*, if it be after the return of the *Exigent*,

They pay now more in many Counties,

For the executing of a Writ of inquiry of Waste.

For the executing of a Writ of Inquiry of Damage in trespass,

Trespass upon the Case, &c.

For the executing of a *Liberate* upon a Statute or Recognizance,

For the Execution of an *Habere facias possessionem*, or *Seisinam* upon an *Executione firme*, a Writ of Right, of making Particulars, &c. Dower, &c.

As you can make agreement with the Sheriff.

For the executing of an *Elegit*, and for the Inquiry upon it.

For the executing of a Writ of Forcible Entry, or holding with force, whereupon the party moved, is to be restored by the Sheriff to his possession.

For the executing of a Writ of Inquiry upon Assault and Battery.

Upon a Rescous, and many other, too long here to insert. The like as before.

For the returning of a *Mandavi Ballivo Libertatis*, &c. 4 d.

Upon the serving of an Execution for Money, either Debt or Damages.

The Sheriff hath poundage allowed him, and is a general Rule allowed by the Statute in Queen *Elizabeth*. time. See the Statute what it is.

There are many other Fees incident to the Sheriffs in many Actions, and otherwise, which in respect the Actions themselves are most of them out of use, are not so well known; and indeed, a man had need to be well experienced in the Office of an Under-Sheriff, to know both what Fees he ought to receive, and what he ought in the Exchequer to pay.

The Court of Kings Bench comes next to be treated of, wherein we shall be the briefer, in respect that many Actions treated of at large before, in the Court of Common Bench, are here also brought, and all that differences their proceedings, is for the most part, matter of form.

THe Court of the Kings Bench, consists of a chief Justice, and three other Judges.

The subordinate Officers are as follow :

The chief Clerk of the Court, or Master of the Kings Bench Office, whose place is executed by his Secondary for the most part, or his Clerks under him, who write all Pleadings, and Declarations, and other proceedings upon Records, and are accountable to him for the same.

His Deputy also signs all *Latitars*, which is the first Writ whereby a suit is commenced : and Writs of *Alias*, *Plures*, *Capias*, *Elegits*, *Habeas Corpus*, *Procedendo*, *Habeve facias possessionem*, *Certiorari*, *Disfringas Balliv.* *Disfringas nuper Vic.* *Return Habendo*, *Capias in Withernam*, second deliverance, and some others. He also keeps the Remembrances of all Records, whereby you may find out any Record with little trouble, especially if you know the Term when it was entred, and the Attorneys name : and also all Writs returned, and *Possessas*, and Writs of Error are kept, and filed in his Office, and also common bails, and especial bails, after they are accepted of by the Plaintiff or his Attorney, are likewise filed and entred upon Record in his Office.

Secondly the *Custos Breuium*, his Office is to file all Original Writs, and other Writs, wherein you proceed against any person you intend to outlaw. And also makes up all Records of *Nisi prius* for tryals at Assizes in the several Counties; and hath several Clerks under him, who write the same; but many times the Plaintiffs Attorney, or the Defendants Attorney, if you go to tryal by *proviso*, write the same, that he may dispatch his Clients business the sooner, for which you pay for every press, which is to contain sixty lines, 6 s. 6 d.

The Secondary to the chief Clerk, he always attends the sitting of the Court, for to examine business, which is referred

red to him by the Judges ; and afterwards makes his report thereof, how the case stands. He also signs all Judgments, and Taxes costs thereupon, and gives all Rules to answer and reply, and to go to Trial by *Proviso*, and many other; and usually resolves all doubts and questions of the other Clerks. And if any difference arise between any of the Clerks, for matter of practise, it is usual with them that are fair practisers, to refer the same to him to determine, and not to trouble the Court with unnecessary motions, and expend their Clients money in vain, which may that way be saved.

The Clerk of the Papers, his office is to make up all special Pleadings and Demurrers, which the Plaintiffs Attorney most commonly speaks for, and afterwards, by vertue of this Office, gives a Rule upon the side of the Paper-book, for the Defendants Attorney to bring the same to him again to be entered within four days, or else Judgment to go by default.

Keeper of the Files of Declarations, with whom after they are ingrossed in Parchment, and continued on the back from the Term you declare, until it come to an Issue, are filed.

Keeper of the Signe and Seal for the Bills of *Middlesex*, who keeps a Book, containing the Plaintiffs and Defendants names, and where you may search for any appearance, or any Writ that is taken forth.

The Clerk of the Rules, whose Office is to attend the Court, and take short notes of all Rules and Orders that are made in Court (except those which belong to the Crown Office) and afterwards draws the same up, and enters them in a Book at large, for which you pay eight pence, and for the Copy of every Rule, four pence, if it be of the same Term, otherwise you pay eight pence. He also files all *Affidavits* that are used in Court, and hath the benefit of making Copies of them, for which you pay for each sheet four pence, and with him you are to give all Rules of course; as Rules upon *Capi Corpus*, *Habeas Corpus*, for a *Procedendo*, *Posse's*, Writs of Inquiry, and such like.

Philizers, one for each County in *England*, who make out all Writs, wherein you intend to proceed by Original, and so to the Outlawry, except the Original it self, which you are to bespeak of the Curfitor of the County, where you intend to lay your Action, in such manner as you bespeak Originals, which are made in the Common-Pleas. And they have

have the benefits of all Writs and Entries thereupon, and allow the chief Clerk nothing for the same.

The Marshal of the Kings-Bench, who hath the custody of all Prisoners who are sued in the Court, like to the Guardian or Wardens of the *Fleet*, which is a Prison properly belonging to the Common-Pleas and Chancery; and every one that is sued and arrested in this Court of Kings-Bench, is supposed to be in custody: for you cannot declare against any man, who is arrested upon a mean Process, in any County or City, and he remain in Prison there, for want of Bail, until he be removed by a *Habeas Corpus*, and always either he himself, or his Deputy, or Servants, attend the Court for that purpose, to take prisoners, who are committed to their custody.

Clerk of the Errours, he allows all Writs of Errour, and makes *Superfedeas* thereupon, into what County you please to have them.

Cryers, who always attend upon the Court, either to call Non-suits, give Oaths to Witnesses, and Jury-men at Tryals, or to any others whom the Judge shall direct; and at the end of every Term, they do adjourn the Court.

Porter, who is to bring the Records out of the Office, when they are to be used in the Court.

This Court of Kings-Bench, holds plea in all Actions of Debt, Detinue, Covenant, Accompt, and all Actions of the Case, either upon promises, or for scandalous words, or for special Nuisance, &c. Trover and Conversion, and many other like, &c.

The course of proceeding there is by way of *Latitas*, as their first Process, if the Action be brought, or the party to be arrested in any other County then *Middlesex*.

If in *Middlesex*, then you take out a Bill of *Middlesex*, with any Clerk of this Office, for which you pay 1 s. 6 d. and then you are to carry it to the Under-Sheriff of *Middlesex* his Office, who is to make out a Warrant upon it, for which he hath 4 d. and then you imploy that Bailiff you think fit, for the arrest except your Warrant be directed to the Bayliff of any particular Liberty, and then you are to imploy one of his Bayliffs.

If it be a *Latitas*, it supposeth a Bill of *Middlesex*, and that the party cannot be found in the County of *Middlesex*, as it appears by the latter end of the Writ, where it is said, the Sheriff

The Compleat Attorney.

Sheriff of *Middlesex* returns, that he is not found within his Bayliwick, but that he lies hidden in another County; and therefore command is given to the Sheriff of that other County, that he take him, &c.

This Writ or Bill of *Middlesex*, I conceive, is in the nature of the Original in the Common-Pleas, which Warrants the *Capias*, and hapily may very anciently been in use for that purpose; for that otherwise it were in vain to insert those words of the Sheriff of *Middlesex*.

A Latitat.

REX, &c. Vic. Canc. salutem Cum Vic. n^{ost}r. Midd. nuper precipimus quod caperet E. C. generos si invent fuisset in balliva sua & cum salvo custodiret. Ita quod haberet Corpus ejus coram nobis apud Westm. die veneris prox. post octabis Purificat. beate Mariæ Virginis ad respondend. J. C. gen. de placito transgr. Prædictus quæ Vic. in Midd. ad diem illam nobis retornavit, quod prædict. E. non est inventus in Balliva sua super-quo ex parte præd. J. in Cur. nostra coram nobis suffic. testat. est quod prædictus E. Latitat & discur in Com. tuo. Ideo tibi precipimus quod capias eum si invent fuer. in Balliv. tua & eum salvo custod. Ita quod habeas corpus ejus coram nobis apud Westm. die Jovis prox. post mense. Pas. ad respondend. præfat. J. de placito præd. Et habeas ibi tunc hoc breve T. O. B. apud Westm. xij die Febr. Anno Regni n^{ost}ri xvj.

This Writ is 4 s. 1 d.

Alias Capias.

REX, &c. Vic. Canc. salutem. Precipimus tibi sicut alias tibi precipimus quod capias M. T. si invent. fuit in Balliva tua & eum salvo custod. Ita quod habeas corpus ejus coram nobis apud Westm. die Jovis prox. post xv. Sanctæ Trinitatis ad respondend. R. C. de placito transgr. Et habeas ibi tunc hoc breve, T. &c.

This Writ is 13 d.

Plures

Plures Capias.

R E X, &c. Vic. Canc. salutem Præcipimus tibi sicut plur.
tibi præcipimus quod capias G. L. si invent. fuit in balli-
va sua & eum salvo custod. Ita quod habeas corpus ejus coram
nobis apud Westm. die Veneris prox post mensem. Pasch. ad re-
spondend. W. C. de placito transgr. Et habeas ibi tunc hoc breve
T. &c.

Bill of Middlesex.

M Idd. ff. Prac. est vic. quod capiat A. B. Si &c. Et eum
salvo custod. ita quod habeat corpus ejus coram nobis
apud Westm. die Mercur. prox post mensem Pascha ad respon-
dend. C. D. de placito transgr. Et quod habeat ibi hoc præcept. &c.

Per. billam.

Henley.

Charge 13 d.

These Writs you may have renewed every Term; until you
get the party to be arrested: But if the *Latitat* remain un-
renewed for five Terms, after you have taken it out, then
you must have a *Latitat de novo*, for that you cannot renew the
old.

Upon any of these Processes, if any of the parties to be ar-
rested, dwell within a Liberty, you must get the Sheriff to re-
turn a *Mandavi Ballivo* to your Process, and upon that the
course is to have a *Non omittas*, &c. for which you pay 2 s. 4 d.

Whereupon, this, or any the other Writs, the party or par-
ties be arrested, and have put in Bond for his appearance to
the Sheriff, you must pay the Sheriff 4 d. and he will re-
turn you a *Capi corpus*; upon which, if the party do not ap-
pear at the return of the Writ, you may give the Sheriff a
Rule to bring in his body, on pain of 40 s. &c. which costs
4 d. and then, if he do not come in and appear, you may
have a *Habeas corpus* upon the *Capi corpus*, which costs 2 s. 4 d.
If the Sheriff will not return this Writ of *Habeas corpus*, you
may amerce him as before: If he doth return the Writ, and
brings not in the body, he can return nothing but *Languidus in
persona*; and upon that you may have a *Duces tecum licet lan-*

R

guidus,

Scidus, &c. upon the like price ; or else after the party is Arrested, you may have a *Habeas corpus*.

At the return of all, or any of these, you may amerce the Sheriff, and he shall pay it after those Rules given in the Kings-Bench.

If you will estreat your amerciament into the Crown-Office, the charge of every Rule estreated, is 2 s. 4 d. un-estreated, 4 d. and in this course you may both amerce the Sheriff, and prosecute till such time as he doth appear ; but if there be any great amerciament, the Defendant will appear for fear the Sheriff sue his Bond. And after the Amerciaments are returned into the Crown-Office, if they be not certified and returned into the *Exchequer*, which is once in every half year, where they are estreated before that time ; if you be sued upon the Sheriffs Bond, you may upon motion of the Court, if the Plaintiffs Attorney (to whose Client the Sheriffs Bond is commonly assigned) will not consent otherwise, that you are content to appear, as of the same Term the first Writ was returnable, and to accept of a Declaration, and not to delay the Plaintiff in his Suit : the Court will usually order the Suit upon the Sheriffs Bond to stay ; or if the Amerciaments be estreated, then upon the same offer, and also to take off those Amerciaments, the Court will order the like. And when any one intends to appear, he must file a Bail with the Master of the Office, fairly written in Parchment, the form whereof is as follows :

If it be a common Bail thus :

A. B. de C. *in Com. D. Gen. traditur in Ballium, super capi corpus.*

Johanni Doe de London, *Trom.* & Richardo Roe de eod. ci-
fili. E. E. quer.

If special Bail upon a *Habeas corpus*, then you must say (such a one) naming the Plaintiff, is delivered unto Bail upon a *Habeas corpus*, to such persons, naming his Bail (instead of John Doe, and Richard Roe) at the Suit of the Plaintiff, in the Plaintiff not naming the Defendant, as in the common Bail, which must also be fill'd with the Master of the Office.

In what Cases you are to require, and may stand upon good Bail.

IF the Defendant do appear, and he stand indebted to your Client, either by Bond, Bill, or otherwise, to the value of 30 l. or 10 l. you may force him to put in good Bail, if you mistrust his sufficiency.

But if it be in an Action of the Case for words; though the party be nothing worth, and you are likely to recover great damages, yet can you very hardly hold him to good Bail: yet in some cases it hath been observed, that good Bail was required; as where one had made a Libel against another, who was a Magistrate.

In any Action of *Ejectione firme*, and in an Action of Trespass, good Bail is not insisted on, nor required, except in some special cases, then the Court will order that there be special Bail.

Nor is there good Bail required against Executors or Administrators, in any Action brought against them, unless in such case where you can directly prove they have wasted the Goods of the Testator.

If Bail be put in, either common or special, at another mans Suit, a stranger may upon this Bail put in Declaration; but then he must declare of the same Term the Bail was put in, which is not used in the Common-Pleas. But the party at whose Suit the Defendant was arrested, may declare the next Term after the Defendants appearance upon the Bail.

But if it be especial Bail that he put in, no stranger shall take the benefit of it, although he declare of the same Term.

If the Defendant appear in his proper person, you must declare within three days, otherwise he will have costs.

If you have declared, and do not call for answer, nor enter within three Terms after the appearance of the Defendant, the Plaintiff shall be non-suited, and the Defendant shall have costs.

And if you arrest one in the County, upon mean Process, and he is in the Sheriffs custody there for want of Bail, for the space of three Terms, and you do not remove him into the

custody of the Marshals, where he must be, before you can declare against him, the party arrested may have a *Superfedeas*, and file common bail.

The Declarations are usually drawn by the Clerks of the Office; for they that are Clerks of the Office, are to do the business of those which are Attorneys at large; and their Names are onely used as Attorneys: but those Clerks are in right of their being Clerks of the Office, Attorneys of the Court.

Their manner of practice is something different, in respect of the delivery of Declarations, from that in the Common-Pleas.

In the Common-Pleas, the Plaintiffs Attorney or Clerk, hath the benefit of both the Copies of the Declaration, both on the part of the Plaintiff and Defendant.

But in the Kings Bench, the Declaration being drawn by the Plaintiffs Clerk, the Defendants Clerk calleth for it; or else it is delivered unto him, and he maketh a Copy of it; and hath the benefit of it; and then the next Term after, or so soon as the Plaintiffs Clerk calleth for answer, to plead, or to confess the Action, or let it go by default.

Their Declarations that are drawn, they ingross severally in pieces of Parchment; and upon the back of them they enter the Continuances, from the Term that is within written, unto the very Term that they either confess in the Action, or plead to Issue; and that the Issue be entered upon Record; and after Issue is joyned, many times they defer the entering of the same, till the Cause be tryed, which is otherwise in the Common-Pleas; which is beneficial both to the Plaintiff and Defendant, being they may in the mean time agree the business, and so save that charge.

In their Declarations, they begin with the name of the Plaintiff, and say, that he complains of the Defendant, very seldom naming of what place, &c. unless upon a Bond, where the *Alias dictus* must be observed, in the custody of the Marshal, &c. for so the Declaration supposeth every person they declare against.

When they come to mention the Bond, Indenture, or Bill, if in an Action brought upon any Specialty, there they have (*Profert hic in Curia*, &c.) in the middle of their Declaration, whereas in the Common-pleas, they conclude their

De-

Declarations with it; at the close of their Declarations, they add underneath.

Pleg de prof

Johannes Doe,

Richardus Roe,

J. B. Pro *Suar.*

C. B. Pro *Defend.*

Next that they add

THe many and several Actions of the Case before mentioned, in the practice of the Common-Pleas, are much used likewise in the practice of this Court; and in those Actions they may proceed to Outlawry by Original, and so through their Philizers Office; in which Cases, or in Trespas, or Trespas of Assault and Battery, if a man be Outlawed in that Court, he is half undone; if he be a poor man; for besides that, it costs him 6 l. 13 s. 4 d. or upwards, to reverse the Outlawry; he must, although he live an hundred, or an hundred and fifty miles distant from London, come in person (if he be able) to reverse it; and besides must procure good Bail; and in case he be impotent that he cannot travel, then there must be *Affidavit* made thereof before a Judge; which done, he may reverse it.

One may proceed to Outlawry in this Court, as well as in the Common-Pleas, in all Cases, except in these four,

1. Debt.

2. Detinue.

3. Covenant.

4. Accompt.

But it is seldom made use of but upon good occasions; that is to say, when the Defendant hath a good personal Estate in Debts, Cattel, or Stock in his Grounds, and is hard to be taken and arrested; for otherwise Outlawries are but mean Scare-Crows, to disable both the Plaintiff and Defendant, in putting them to unnecessary charge, whereas upon a *Latitat* you may procure a man to be arrested presently, and make him put in good Bail, which is all you can do upon an Outlawry, after three Terms space. And besides, upon a *Latitat*, you may declare against the Defendant, in as many Actions as you please; whereas in the Common-Pleas you must have

for every Action one Original, and if it be a Debt which exceeds 40 *l.* you must pay as before is told you 6 s. 8 d. fine, and if 100 *l.* you pay 10 s. fine, and so proportionably; and as soon as you helpeak your Original, before you have any benefit of your Suit, whereas no fine at all is paid in the Kings-Bench, until the filing of the Declaration, and then you must pay 5 s. in the hundred. And in the Kings-Bench, the Plaintiff hath longer time to declare, than is allowed in the Common-Pleas; (if the Defendant do not appear in person) and then you must declare within three days after.

When the Plaintiff and Defendant are at Issue, the Defendants Clerk hath the benefit (as before of making the Declaration) so of making the Copy of the Issue for the Defendant, which is otherwise used in the Common-Pleas.

If there be special pleadings in any Action by the Plaintiff or Defendant, which either comes to Issue, or that there be a Demurrer, then they carry the whole Book to the Clerk of the Papers, who giveth a Rule to the Defendant in the Margin of the Book, to joyn in Issue, or in a Demurrer, and he maketh up the Books, and is paid 8 d. a sheet for the same; which is otherwise in the Common-Pleas, for there the Plaintiffs Attorney hath that benefit.

The Clerks of the Office are to account with the Master of the Office after the end of every Term, for all Writs, &c. which they have had of the Term preceding.

After Verdicts, and that they have the *Posse's* returned, and that the Master of the Office hath signed costs (which he doth, as he doth all other business by his Secondary) then they enter up their Judgments, every Clerk his own, and so he maketh out his Executions, either against the body, which is commonly called a *Capias ad satisfaciend.* or else against the Goods, which is commonly called a *Fieri facias*, or else against the Lands and Goods, which is called an *Elegit*; but if you once charge the body in Execution, you have no remedy against the Goods or Lands.

If it be an Issue of any former Term, that is entred upon the Roll, or of the same Term, then if they will have a Record of *Nisi prius*, they must have it made by the *Custos Brevis* of that Court, who keepeth particular Clerks for that purpose; for they are to pay him for them, although for expedition the Attorney or Clerk most usually makes them himself,

self, and then the *Custos Brevirum* Seals them. This Court of Kings-Bench holdeth Pleas of the Crown, and to that purpose there is an Office called the Crown-Office, and the Master of it is called the Clerk of the Crown; and here may be brought Indictments for all manner of Treasons, Murder, Felony, Breaches of the Peace by Battery, &c. Breach of the good Behavior, for Perjury, all publick Nuisances, Appeals in case of Murder; and here likewise Informations upon penal Statutes are brought; and here Issue out *Certioraries*, to remove Indictments from private Sessions; and hither are all Convicts certified.

They have belonging to this Office a Secondary who sits in Court, and takes notice of what Rules are made on the Kings side. They have likewise several Attorneys of that Office who have the business of the County, as to that Office, divided amongst them, who intermeddle not with any thing relating to the Court, other than in their own Office.

How to sue upon a Statute Staple.

IF you would sue forth Execution upon a Statute Staple, go to the Clerk of the Statutes, and shew him your Statute, and he will make you hereupon a Certificate; which being made and sealed by him, carry it to the Clerk of the Crown in Chancery, (which is the Office) and upon the delivery of the Certificate to him, he is to make your Extent, which you must after deliver unto the Sheriff of the County where the Land lies, who will, by vertue thereof, impanel a Jury, to inquire and extend Lands, Goods, and Chattels of the Cognizor, and may by vertue thereof apprehend the body; if, &c. The Lands being thus extended into the Kings hands, the Sheriff may keep, until you bring your *Liberate*, which you are to have (upon your Extent returned) from one of the Clerks of the Petty Bag; but it behoveth you to be very careful how you sue forth your *Liberate*, and that you do it not before you have fully informed your self what Lands or Goods there are in any other County, that you may Extend, whereby fully to satisfy your Statute; for if you once execute your *Liberate* upon that which was first extended, you shall never have Execution of more, although you make an after discovery. And you are to deliver your Statute into the Petty-Bag Office, before they will make you your *Liberate*.

How to sue upon a Recognizance acknowledged before one of the Masters of the Chancery.

WHen you will sue upon a Recognizance, you must bring it to one of the Clerks of the Petty-Bag Office in Chancery, and he will make you out two *Scire facias*, directed to the Sheriff of *Middlesex*.

The first returnable of a Return past, and the other bearing *Teste* of the Return of the former; and returnable at a day to come, which you must get the Sheriff of *Middlesex* to return; and having them returned, you are to bring them back to the Clerk of the Petty-Bag Office, and then retain one of the Clerks for you, and give the Defendant day to appear.

At which day, if he appear, the Plaintiff is to declare, and the Defendant is to answer, and so proceed to Issue; and upon the Issue joyned, you may have the whole proceedings ingrossed in Parchment, and by *Mittimus* sent into the Kings-Bench, or Common-Pleas; or else the Lord Chancellor, or Lord Keeper of the Great Seal, for the time being, may deliver it so ingrossed into either Court without *Mittimus*, which is said to be delivered, *Propria sua manu*, where the Issue shall be tried, and Judgment given; for in the Chancery no Issue can be tried. But if the Defendant appear not, you shall have Execution by default, which course is indeed most usual.

How to prove a Will, in case the party be present, the Inventory not exceeding forty pounds.

First, you are to bring in your Will, under the Hand of the Testator, and Witnesses Names, and take Oath, that that is the last Will for ought you know; and in case the party live in the Countrey, there must a Commission issue forth to that purpose; which being returned, you must retain a Proctor, and he will sue it out for you; the Charge follows; but it is alterable according to the length or shortness of the Will.

Inprimis, For Registering of the Will,
For Ingrossing the Will,
For the Register, for his Hand to the same,

1 s. 6 d.
6 s.
12 s.
For

For the Seal and Probate of the Will, 6 s. 8 d.

The Proctors Fee and the Prox.

And

For proving the Will,

4 s. 8 d.

For ingrossing the Inventory, and exhibiting the same,

According as you can agree.

These Fees would be far less, could the Registers Clerks be confined to walk by what the Statute directs, and in some very short Wills, they are less than what is above set down.

The Dutchie Court.

THIS Court was much used in relation to Suits between Tenants of Dutchy Lands, and also against Accountants and others for the rents and profits of the Lands, and is a Court of Record, wherein are Pleas both real and personal; as also mixt Pleadings, relating to the Dutchy Lands.

The Chancellor of the Dutchy is the chief Judge of this Court, and next to him the Attorney of the said Court, who in all difficult Cases in point of Law, is usually assisted by two Judges of the Common-Law out of one Court or other, to decide the matter or question in Law.

There is one chief Clerk or Register of the Court, to whose Office it properly belongs, to have the keeping of all the Rolls and Records of the Court, and also of the proceedings therein.

There are divers Auditors of this Court, of which there are two more especial then the rest: The one whereof, his Office extends to all the Dutchy Lands on this side *Trent*, and the other for the Lands beyond *Trent*. To those Auditors doth belong the keeping of the King's Evidence; as Leases and Grants of the Dutchy-Land, as well of the possessions and Copy-hold, as Fee-simple, and Fee-farm.

Although there be divers Surveyors for the Dutchy-Land, for the surveying of it, yet do they not keep any Record to that purpose, unless some short Draughts of their own framing.

Thus much for Courts of Record at *Westminster*, which are for

for the Common-Law practice ; come we now to the Court of Equity, which in many Cases abates of the rigor and severity of the Common-Law, and is called,

The High-Court of Chancery.

IN this Court, the Lord Chancellor, or Lord Keeper of the Great Seal, are the chief Judges ; and in this Court, he or they ; and in his or their absence, the Master of the Rolls, do make Orders and Decrees.

The subordinate Officers of this Court are many.

The twelve Masters in ordinary, which are Assistants to the Lord Chancellor, and Lord Keeper, and sit with them, and to whom References are made, and before whom *Affidavits* are made, and Deeds acknowledged, and Recognizances, &c.

The Register of the Court, who hath divers under him, that sit in Court, and take notice of all Orders, and Decrees made in Court ; and accordingly, afterwards draw up these Orders, and enter them, and file them.

The Six Clerks, in whose Office all proceedings upon Bill and answer, unto the very Decree, and after Decree are acted, and from whom likewise issue some Patents, as for pardon of men for Chance-medley, Patents for Embassadors, Commissions for Bankrupts ; and these by their Clerks, of which each Six Clerk keeps a set number.

The Cursitors of the Court who were incorporated by *Qu. Elizabeth*, by the name of the four and twenty Cursitors, amongst whom the business that lies in the several Shires, is severally distributed. These make all Original Writs in the *Chancery*, which are returnable in the *Common-Pleas*, and all Writs of Entry and Covenant.

The Register is a place of great note in this Court, and hath several Registers under him, who sit in Court by their turns, and take notice of all Orders and Decrees made in Court, and accordingly draw up the Orders, to which you must have a Register's hand, and then you must enter it there ; and in that Office likewise they file the Reports of the Masters.

Masters. The Masters of the *Subpœna* Office. The Clerk of the *Affidavits*, where you file such *Affidavits* as you use in Court.

The Clerks of the Petty-Bag, who have many Clerks under them, and these Clerks have much variety of business that comes through their hands, and requires very much knowledge and experience for the managing of it.

This Office hath the making out of all Writs of Summons to the Parliament.

To this Office are all Offices that are found *Post mortem*, brought to be filed

In this Office are all Pleadings of the *Chancery*, concerning the validity of any Patent, or other thing whatsoever, which passeth the Great Seal.

And these Pleadings are in *Latine*, although most of the rest of their Proceedings are in *English*.

If any question arise about the acknowledgment of any private Deed between Subjects, which is acknowledged in *Chancery* before the Lord Chancellor, Lord Keeper, Master of the Rolls, or any of the Masters in *Chancery*.

All Statutes and Recognizances taken before any Officers of this Court, to that purpose deputed, are here prosecuted and transmitted hither.

In these Offices are all Suits, for, or against any person privileged in the Court.

It is likewise a Hand, whereby to transmit divers things from the riding Clerk, and the Inrolment Office, to the Chapel of the Rolls.

The Examiners are Officers of this Court, who take the Depositions of Witnesses, and are to examine them, and to make out Copies of the Depositions.

There are likewise Clerks of the Rolls, who sit constantly in the Rolls to make Searches for Deeds, Offices, &c. and to make out Copies.

The Usher of the Court, who hath the receiving and custody of all Moneys, ordered to be deposited in Court, and payeth it back again by Order.

The Serjeant at Arms, who carryeth the Mace before the Lord Chancellor, and to whom any person standeth in Contempt, are brought up by his Substitutes as Prisoners.

The

The Warden of the *Fleet* attends likewise this Court, to receive such Prisoners as stand committed by the Court.

This Court consists of a double power, ordinary, as in the case of *Scire facias*, to repeal Patents in Cases of Traverſe, Endowments of a Woman, and the like; and herein the Court is limited, and confined to the Rules used in Common-Law.

The other is extraordinary, and unlimited, which is in Cases of Equity, wherein Relief is to be had by a Suit here, by way of Bill and Answer.

By the power of this Court, are Issued forth Commissions for Charitable uses, Bankrupts, and Sewers.

Here in this Court, in some Cases, Commissions have bin granted to examine Wastes, to set out meet Ways for Passages, to prove a Child legitimate, to prove Customs, and to examine Witnesses, *in perpetuam rei memoriam*.

It proceeds by way of Bill and Answer, in many Cases this Court will give Relief against; besides, and beyond the Rules of the Common-Law, some whereof follow: As where a Charge lies upon one man alone, by the Common-Law, where, in Equity, others ought to contribute a part to this Charge: here in this Case the Court will give relief.

So likewise will the Court relieve one against another, who had falsified and broken his trust with him.

It gives Relief against the extremity of an Engagement, where either the Engagement is without any consideration, unreasonable, dishonest, or discharged; or where there hath bin either Fraud, Force, or the like, used to procure the thing to be done.

Where by Law a man cannot be compelled to perform an Agreement, this inforces it.

It inforces the Inrolment of a Deed, if need be.

This Court will restrain other Courts that take upon them a greater Jurisdiction than properly they have, and removes the Suit into this Court, which is done by *Certiorari*.

This Court will reduce the general Customs of a Manor, to a certainty between the Lord and Tenants, or the Tenants themselves.

It serves to recover Land or Money given to charitable and pious uses, and mis-employed.

It inforces the Husband to give his Wife Alimony.

Where

Where Creditors are unreasonable, this Court inforceth them to take a reasonable Composition of the Debtor, he being disabled.

Where Freehold or Copyhold-land are confounded, it will distinguish it; or if it be lost, it will give a recompence for it.

This Court will ascertain the Fines of Copyholders.

This Court, (where Executors, or others, have Money in their hands, there to lie long) inforces them to give Security or Interest for it.

This Court will enforce the recovery of a Legacy, or force the performance of a Will.

It serves for the recovery of ones Land, Debt or Duty, although he have lost the Conveyances, or Writings, by which he should make his Title to it, or otherwise be without remedy for it.

It inforces him that hath sold Land, and taken Money for it, assured by defective Conveyance, to make the same perfect and good.

It will enforce a Tenant to attorn, to perfect an Assurance.

In these, and such like Cases, this Court of Chancery doth always, or for the most part, give relief; as you may see more at large in *Torbills* and *Carrs* Reports.

In some other special Cases, likewise this Court doth exercise a power, as to prevent the dis-inheritance of an Heir, or restore it.

To avoid the extinguishment or suspension of Rent or Common.

To prevent an Occupancy.

To avoid the bar of an Action, by the Statute of 21 Jac. of Limitations.

It will order the Inclosure of Grounds or Lands that are common, give relief against the turning of a Water-course from a Mill, so as there be any special circumstance in the Case; otherwise it is very slow and tender in making Orders in them.

But regularly this Court doth not give relief where the Substance of the Suit by Bill and Answer tends to the overthrow of an Act of Parliament, made for publick peace and repose, or to the overthrowing any fundamental point of the Common-

Common-Law, or to overthrow and take from other Courts their peculiar Jurisdiction, or the like.

In all such Cases, wherein the Plaintiff hath his remedy at Common-Law for the very same things, he shall not be relieved here.

Where a Promise is made to assure Land for a certain Sum of Money, in this Case the Party may either sue at Law for Damages, or in *Chancery*, for the Land it self.

The like Case for a Nuisance, where the Law gives me Damages, I may sue here to have the Nuisance removed; or the thing it self restored; and yet there may be some special circumstances in the Case, which may make the Court retain it; as where a Suit is grounded upon a Will Nuncupative, Lease Parol, or long Lease, to avoid Wardship, or to establish Perpetuities, or to desert Purchasers, or for Brokage, or Rewards to make Marriages, or for Bargains at Play, or Wagers, for Bargains for Offices against the Statute of 2 *Edw. 6.* or upon Contracts for Usury or Simony; of if it be for Land not worth forty shillings a year, or for any thing else under the value of ten pounds, those are regularly disallowed here; and sometimes upon notice taken hereof by the Court, upon hearing, it is dismissed; but if it stays longer till it comes to motion, or upon *Affidavit* only, before the Cause comes to hearing, it is then dismissed; yet there are some Circumstances that may make some of these retainable; as where the Suit for so small a matter be for the Poor of a Parish, or the like.

In such like Cases as these, the matter being heard upon Bill and Answer, and the Proofs and Witnesses, the Court may (without any regard to form or mispleading; so as the truth, *vis & modis*, may be discovered) proceed to sentence it according to Equity and good Conscience.

All persons able in Law to sue or be sued, may in this Court sue or be sued.

Relief may be, and is often given against, or for an Infant in this Court; touching which matter, these things are to be known:

As to Suits against an Infant:

First, an Infant hath been compelled to answer a Bill in this Court; as in *Hare's Case*, *Hill. 3 Jac. and More's Case*, 11 *Car. Tostil* 108, 109. And being but twelve years old, was bound by a Decree of this Court, 37 *Eliz. Waltham's Case*, and upon a review decreed again, *Cromwell's Case*, *Mic. 7 Car.* and was committed to the Fleet for disobeying a Decree, 12 *Eliz. Tostil* 108, 109.

Secondly, This Court may also, if it pleaseth, appoint an Infant Defendant, a Guardian to defend his Suit, *Caries Reports* 38.

Thirdly, A Copy-hold was surrendered to the use of an Infant; or the Infant to pay an Annuity to another at his full age, which he refused; it was decreed, he should pay it, and the arrears thereof, *Sawyer's Case*, 9 *Eliz. Tostil* 107.

Fourthly, *Young* purchased Lands in the name of *Mason*, in trust for himself and his Heirs, and dies, not declaring any determination of his trust, procures *Mason* to convey it to him, being of Kin; he conveys it to Infants: C sues here as next Heir, the Court agrees, That if the benefit of the Trust did belong to C. that it shall be decreed to him during the minority, and then that the Infant shall convey it. See *Caries Reports* 30.

Fifthly, A Mother conveyed her Lease to her Son in trust, and after the Son conveyed it to his Children, Infants; and it was decreed against the Father and Children, because done without any consideration, *Tostil* 98.

Sixthly, Between the date and sealing of the Conveyance of Land sold, the Lord *Morley* passed it to an Infant, and it was decreed against the Infant and him both, 36 *Eliz. Lady Russels Case*.

Seventhly, The Father being Tenant in Tail, sells his in-railed Land, and leaves as much free Land to descend to an Infant, the Court ordered him, when he comes to age, to pay the Money given for the Land, according to his Fathers Will; or else that the Purchaser shall have the free Land, *Tostil* 184.

Eighthly, An Infant may by this Court be compelled to give

give a discharge of Money due to, and received by him ; as in *Rayner's Case*, 13 *Car.*

Ninthly, where one made an Infant Executor, to prevent the payment of his Debts, he was ordered by the Court to pay them notwithstanding, *Mich. 9. Jac. Tothil* 108.

Tenthly, an Infant may in some special Cases by this Court be concluded by his agreement.

But regularly, if an Infant be twenty years of age, and make a Contract never so much to his advantage, the Court will not conclude him, nor will the Court decree against him by his consent, or the consent of his Parents, but in some special Cases upon the merit of the Cause, *Mich. 8. Car. in Chancery.*

A Father being about to convey some of his Land to his younger Son, and the eldest Son promised to give the younger Son an hundred Pounds if the Father would forbear it ; in this Case the eldest Son being an Infant, was ordered to stand to it. See *Smiles's Case*, 2 *Car. Tothil* 95.

Eleventhly, a Surrender was made of a Copy-hold by an Infant, to the use of J. S. for money paid, and no help could he had here, *Hugh's Case*, *Tothil* 180.

Twelfthly, if I take Bonds for my Money in my Childrens Name that are Infants, I may release the Debt ; and the Court will allow it, and forbid any Suit upon them.

As to Suits by, or for an Infant.

First, he shall have the same relief upon a Breach of Trust, Fraud, or the like, in this Court, as another man may have, notwithstanding his minority, *Tothil* 108.

Secondly, he may sue by himself, or his Procheinamy or Guardian, as the Court will order.

Relief is often given by this Court, against, or for a Woman under Covert-Baron ; touching which, these things following are to be known.

As to Suits against her.

First, she shall be compelled to answer with, or without her Husband. See *Caries Reports*, 100, 101. *Tothil* 95, and 95.

But

But more especially, if he be out of the Land; and she shall be bound by the Decree of this Court; as in *Westdeans Case*, *Tothil 93*. And she may be committed till she do obey it, as in *Stywards Case*.

2. This Husband and Wife were ordered to levy a Fine, and perfect Assurance, *Tothil 93*.

3. The Husband was ordered to give security, that the Wife should release her Right to Land. See *Tothil 92*.

4. An Agreement in some Cases will here be ordered, to conclude her where the merit of the Cause requireth it: As if a man have two Tenements of his Wifes Land, and they agree with the Tenant, that if he will surrender the one, he shall have three Lives in the other, and he doth so, and the Husband dies, the Wife was ordered to make it good. See *Irelands Case*, 37 *Eliz. Tothil 91*. But regularly it is otherwise; and therefore where she hath Land with other Co-heirs; and she, with the consent of her Husband, agrees to take a thousand pounds, to release her Right, the Judges did certifie she was not to be concluded, *Tin. 7 Jac. Dockwrys Case*, *Tothil 98*. Yet in 10 *Jac. Randals Case* was, That a single woman did agree, and after her Marriage subscribed her Name, with her Husband, to a late Agreement, and was concluded on by this later, by the Courts order, *Tothil 96*. But in *Slators Case*, 37 *Eliz. Tothil 92*. she and her Husband did Article to forego her Joynture, for other Recompence; and a Decree was made thereupon (but without her consent) in her Husbands life-time; and after his death, the Court will not bind her to this Agreement.

5. A Lease of Land was made to Friends, to her use, to begin after her Husbands death, and they two levy a Fine of the Lands, this will not bar them in Equity, *Tin. 15 Car. Lifters Case*.

A. made over his Lease for years, to the use of C. his Wife, afterwards he and his Wife sold the Land, and levied a Fine of it to D. The Court ordered, That the Purchaser should enjoy the Land against the Wife, after the Husbands death, 2 *Car.*

One was seised of Land to the use of a Feme-sole, who after took a Husband, and her Husband sold the Land, the Wife had the money, and she and her Husband desired the Feoffee in trust, to convey it, and he doth so; yet it seems the Court of Chancery will not bar her of the Land after her Husbands death.

The Court ordered the Husband and Wife to levy a Fine of mortgaged Lands settled in her; the Lady *Griffin's Case*, 4 *Car.*

One did convey Land to her Husband in trust, and he took the profit, and left it with his Wife, and she married again; they two were sued in this Court, and yet neither, as Executor nor Administrator to her first Husband; as in *Acklands Case*, *Tothil* 106.

As to the Suits by and for her.

In some Cases she may sue her Husband, as for Alimony or maintenance, where they be parted; but ordinarily she may not sue her Husband; nor her Husband sue her, *Sympton's Case*, *Tothil* 94, 97.

Secondly, She hath been allowed to sue without her Husband, and without his privity, especially he being beyond the Sea, *Tothil* 95.

The Woman and her Husband agreeing to part upon difference, and he giving her a sum of Money for her livelihood, which was put into a friends hands for her, she was allowed to sue alone for this without her Husband, *Carries Reports* 87.

Thirdly, She was admitted to sue here for her duty released by her Husband, gone beyond Sea, as in *Farewells Case*, 32 *Eliz.* and *Barkers Case*, 5 *Car.* *Tothil* 95. As for her Jewels, the Earl of *Derby's Case*, *Tothil* 96. And yet she having Goods, she pretended to her *Paraphronalia*, the Husband devised them, and it was here allowed to be good, and she remediless, as in *Davenport's Case*, 5 *Car.*

Fourthly, If a Woman hath goods at the Marriage, and the Husband doth use and dispose them all his life-time, and then giveth them away, or maketh an Executor; this Court, it seems, will give her no relief, albeit the Husband leave never so good an Estate besides, unless they be goods set apart, and preserved for her livelihood, by some agreement, or the like, *Tothil* 55.

Fifthly, A Woman divorced from her Husband, *Causa frigida*, sued in this Court for her Portion, her Father being alive, and recovered it, *Barrow's Case*, *Tothil* 81.

Sixthly, The Wife being parted from her Husband, and having an Estate to her self, was allowed by the Court to devise by her Will, *Mitch.* 15 *Car.* *Tothil* 97. *Georges Case*.

Seventhly,

Seventhly, If a Feme-sole being possessed of a Term, granteth it over, or a Term be granted by another to her own use; and then she taketh a Husband, and dieth, in this case the Court ruled it to go to the Executor or Administrator of the Wife; and not to the surviving Husband.

A. being possessed of a Term, granted it upon a Marriage to be had between him and *R. S.* to *J. S.* her Brother, to her use, and after Marriage *A.* dieth, and she marrieth again, and then she died; *J. S.* the Brother took out Administration of her goods, and got the Lease, and the second Husband sued him in this Court for the Lease, but the Court would not relieve him, *Pasch. 32 Eliz. Withernam's Case in Chancery*; Cook upon *Lisleton* 350.

Eighthly, *A.* being possessed of a Lease for years; granted it to *B.* and *C.* to the use of *A.* and his Wife, and afterwards *A.* granted away all his Interest to a stranger, and the Court would not order it against the Wife, *Dyer* 369. *Crompton's Jurisdiction* 65.

A. conveyed her Lease for years to Lessees in trust, to the use of her Daughters and Children lineally, *A.* had a Daughter by one Husband, who had Issue, and it died; and the Husband also; then she marries again, then the Lessees in trust, convey the Lease to the Mother and her second Husband; and she discharges the trust, gives it to her Husband, and the Heir sued for it.

It was ordered, That the Husband, and not the Heir, should have it, *Baskerville's Case, Tothil* 95.

A Widow being about to marry, to prevent her Husband's disposal of the Land, conveys it to Friends in trust, who with the Husband do sell it for a valuable consideration, and she sued in *Chancery*, and the Court decreed; that the Purchaser should reconvey it to her, but should first deduct all his Disbursements, *Fitz-James's Case, Tothil* 43.

A single Woman, Widow, or Maid, may sue and be sued here, as another body; of which take some few Cases.

1. A Widow of a Tenant in *Capite*, sued here for her Dower, and had a Commission to set it out; as in *Wills Case* 25 *Eliz*.

No Woman shall recover Dower of a trust by this Court, *Mich. 2 Car. Kemp's Case*.

When the Woman cannot tell who is Tenant to the Land, she may sue (albeit her Writ of Dower here at Law) to discover the Tenant, to know against whom to bring her Action, *Totbil* 59.

A. conveys Land to *B.* and his Heirs, to the use of him and his Heirs, in trust for *C.* and his Heirs (*B.* having then a Wife) *B.* dies, and his Wife sued for Dower of the Land; *C.* sued against her for relief here, and it was denied; yet the Wife of *C.* should not have had Dower in this Case; for a Woman shall have no Dower of a Trust, *Herns Case, Totbil* 9.

So *A.* delivers *B.* five hundred pounds, to put to use for him, and *B.* doth buy Land with it, and makes *A.* believe it is for him, and in his name, but it was in his own name: *A.* it seems, satisfied herewith, *B.* dieth, and his Wife sued to be indowed of the Land, and the Court would give *A.* no relief against this Suit, *Trin* 6 *Car.*

A Copy-holder cannot be sued for Land without the Lord, *Carries Reports* 57.

An Heir also here, in some Cases, shall sue and be sued, further than the Law bindeth him; as in the Cases ensuing.

An Heir of an Estate in tail, having Lands in fee, descended from the Ancestor, in lieu thereof is bound by Decree to pay the Purchase-money, or let the Purchaser have the Free-land; *Pearces Case, 8 Jac. Totbil* 84.

The Mother and Son bought tailed Land of her Ancestor, to the Plaintiff, some of the Money due on a Bond which is lost, the Court thought fit to charge the Mother and the Son, because of the Land in their possession.

The Father sold his intailed Lands, but had little for them; it seems the Heir may compel the Purchaser to give the worth, *Totbil* 82.

The Father articulated for Land, the Son no party, but consented to it, and it was decreed against him, *Pauls Case, Trin.* 4 *Jac. Totbil* 63.

A Deed not inrolled was decreed against the Heir of the Land, *Totbil* 51.

The Father conceiving his Land to be Free-hold, gave part of it to a younger Son, and it fell out, that there was an old sleeping Deed of Intail, and yet it was ordered the younger Son should have it, *Pountneys Case, Totbil* 54.

Executors

Executors may charge, or be charged in Equity, further than the Law doth charge, wherein as to Suits or Acts by them, take these ensuing.

1. Here they may sue one the other, *Totbil* 8.
2. One of them may sue an Executor of an Executor, if he hath gotten the Estate in his Hands, *Briertons Case*, 6 *Jac. Totbil* 87.
3. Two Executors be, the one doth disagree, the Act of the other shall bind in Equity, as it doth in Law.

As to Suits against Executors, take these things.

First, One Executor alone, without the rest, may be sued here, but he shall be charged for no more than he hath, *Harbages Case*, 35 *Elix. Totbil* 86.

Secondly, An Executor shall be bound by Decree against the Testator, *Hilt. 5 Car.*

Thirdly, He must pay costs adjudged here against the Testator, if he have Assets.

Fourthly, He shall not be charged here for a Trespass done by the Testator, *Hollands Case*, *Totbil* 84.

Fifthly, Nor may he be compelled here to give Bond to perform the Will, without special cause be shewed; as that he is decayed in Estate, or hath broken the trust already in some particulars, or the like, *Browns Case*, 32 *Elix. Totbil* 36.

Sixthly, He may here be ordered to pay a Debt by Word, before a Debt due by Specialty, *Totbil* 53.

One Joynt Tenant, or Tenant in common, may here have relief against another.

The Father may here have relief against his own Son, in case of breaches of trust for a Lease, *Pasch. 1597. Dormers Case.*

Of Trusts.

A Use of Trust was, and still is, either of Land, or of Goods, and both these are either expressed or implied.

A Use of Trust of Land, was a trust reposed in another, that he should suffer him that did trust, to take the profit of it, and he that was trusted, was to dispose the Land according to the direction of him that trusted him: As when a Feoffment was made to J. S. and his Heirs, to the use of W. S. and his Heirs; here J. S. had the Estate and property of the Land; but W. S. had

had, or was to have the profits in honesty and equity. So if one had agreed with *W. S.* for a piece of Land for 20 *l.* paid, and had no assurance, yet the equity of the Land was in the Contractor.

The use of Goods is when one man hath them in trust for another.

The use of Goods or Land expressed, is when the use or trust is expressed between the parties upon the making of the Estate; implied, when it is not declared upon the Agreement, but left to the construction of Law; as if I bargain and sell my Land, levy a Fine, make a Feoffment, or suffer a Recovery of my Land without money, and no use expressed, this, in Law, is to my own use.

But if it be for money, it shall be to the use of the Bargainee, Conusee, Recoverer, or Feoffee.

If it be without consideration, that I conveyed my Land by Feoffment to *J. S.* to have and to hold, to him and his Heirs, to the use of his Heirs; in this Case *J. S.* and his Heirs have the use in Law.

To every of those Uses, there are two inseparable Incidents; Confidence in the Person, and Privity in the State expressed by the Parties, or implied by the Law: And when either of those failed, the use was either gone for ever, or suspended for a time at the least; and therefore if the Feoffee to Use upon good consideration, had infeoffed another of the Land, that had notice of the Use, the Use had been gone for ever; because howsoever there was a privity of Estate, yet there was no confidence in the Person; but if the Feoffment had been without consideration to such a one, in this case the Use had remained still, because the Law did imply a notice: So also, it seems, the Law was, when it was made, in consideration of Marriage only.

As if a Disseisor, Abettor, or Intruder had come to the possession of the Land, whereof the Use was, albeit he had notice of the Use; yet the Use was suspended during their possession, and they should not have been seised to the Use, as the Feoffee was, for they come not to the Land in the *Per*, but in the *Por*.

If a Lord by Escheat, Lord of a Villain, or one that had enured for *Mortmain*, or that had recovered in a *Caſtody*, &c. had come to such Land, and had notice of the Use, the Use

Use had been gone for ever; for those come to the Land in the Possession, and above the Use.

And the Tenant in Dower, and by Courtesie, should not be seised to Uses in being, for all these wanted privy of Estate.

And if there had been Tenant for Life, the Remainder in Fee, in the Use of another; and the Tenant for Life had made Feoffment in Fee to one that had notice of the Uses, this second Feoffee should not have stood seised to the first Uses.

So if the Husband had made a Feoffment in Fee of the Land of his Wife, upon consideration, and without any Use expressed, the Wife should not have had a *Subpana*, because the Feoffee was not in Privy of the Estate of the Wife.

And if *Cuius que use*, for life, or in tail, the Remainder in tail, with divers Remainders over in Use, had made a Feoffment to one that had notice, he should not have been seised to the first Uses.

But now at this day, by the Statute 27 Hen. 8. cap. 10. the Use of Trust, and the possession of Lands, are for the most part united; and in all such Cases where they are united, and the Use executed by the Statute, the Chancery doth not intermeddle, but leave them to the Law. And such is this, where one seised of Land in Fee, doth convey it to the Use of one and his Heirs, or Heirs of his Body, or for life, or to the use of one of his Executors or Administrators for years.

But there are some Uses and Trusts still that are not executed by the Statute, and those remain as they were before, and are in the consueance and order of the Chancery, as where lands are conveyed without consideration in Fee-simple after this manner, that the Feoffee and his Heirs should take the profits and deliver them to the Feoffor and his Heirs; or that the Feoffee shall account and give the profits to the Feoffor, or that the Feoffee shall convey the Land to the Feoffor, or to his Heirs, at the age of a 1 years, or where it is conveyed to *J.S.* and his Heirs, in confidence that *J.S.* shall alien it to whom the Feoffor, or to whom *W. S.* shall appoint, or the like: Or where the Lands be conveyed to certain uses expressed, and there no other secret uses be agreed upon between the Parties.

So where the land is conveyed to one without consideration to one and his Heirs, without expressing any use or intent, this is to the use of the Feoffor, who may dispose of it as he pleaseth; but if it be to any intent certain, as to take back an

Estate with remainders to others. &c. here he cannot change it.

These, and such like Uses and Trusts, are not within, nor executed by the Statute, but they remain as they were before the Statute; for all the State is in the Party trusted, and the Grantor, or he to whose use the Grant is, hath nothing but a Use, for which he hath his remedy only in *Chancery*, where matters of this nature are determinable; for it is a Rule, that as the Questions of Uses and Trusts that are within the Statute, are to be decided and ruled by the Judges of the Common Law; so all other Questions of Uses and Trust, that are out of the Statutes, are to be ruled and decided by the Judges of the *Chancery*, *Cook* 1. 128. *Dyer* 359. 356. *Crompton's Jurisdiction* 85. 58. 59. And the Judges in *Chancery*, in ruling those Cases, do proceed much after the Rules they went by, in the regulating of Uses at the Common Law, before the Statute.

Before the making of the Statute, these amongst others, were the Laws of the Uses.

1. The Feoffor was to take the profits of the Land, and he might have disposed of it in his life-time, or at his death to whomsoever he pleased; and his Friends in trust were to settle it accordingly, or be enforced to it by *Subpœna* in this Court; and if he did not dispose it, the Use was to go to his Heirs, and if he had died without Heirs, or disposition, it seems the Feoffee should have had the Land.

2. If the first Feoffee had conveyed it to a second Feoffee to the same use, or to a second Feoffee that had notice of the uses; in these Cases the second Feoffee had it to the same uses: But if the Feoffee had sold it *Bona fide*, or conveyed the Land to one that had notice of the Uses; in these Cases the use had been gone, and he to whose use it was, remediless for the Land.

3. A Bruit of a Trust, or ones saying, there was a trust to another, I being about to buy the Land, because he would not have me to buy it, it seems is not sufficient; but a Suit about it, and proof of it in *Chancery*, is sufficient notice to him that shall buy it.

4. If the *Cestuy que use* had appointed the Land to be sold by his Feoffees to pay his Debts, the Creditors might have compelled the Feoffee to sell it; if he in his life-time, or by Will at his death, had appointed them to convey it to *J. S.* *J. S.* might have compelled them to it, and so their Heirs.

5. The

5. The Feoffees (if any occasion had been) were to bring or defend any Action for the Land, and to plead such Pleas as the Feoffors should appoint, to be enforced in the *Chancery* to it.

6. If the Feoffor die, and the Land descend to his Heir, the Party to whose use, &c. as it seems, had no remedy against him.

7. If the Feoffee or Donee to use, sell to one that knows of the use, the *Subpœna* shall go against them both, or otherwise against the Party trusted only, who must make a recompence for the breach of trust, if the Land be gone.

These, amongst others, were the Rules by which Uses at Common Law were guided; and much accordingly are Uses now executed by the Statute, and Trusts of Lands and Goods ordered and guided at this day; as in the Case following, of Inheritance and Free-holds, of Chattels, and Goods.

Of Inheritance and Free-hold.

IF I without any consideration Enfeoff one and his Heir of Land, to the intent he shall take the Profits thereof, and deliver to me and my Heirs: Or to the intent he shall account to me and my Heirs for the Profits thereof; or to the intent he shall re-convey it to me and my Heirs; or to my Heir at 21 years old; or to the intent that he shall alienate it to *L. M.* and his Heirs, or to whom I shall appoint; or I convey it to certain uses expressed, but there are other secret uses agreed upon between us: In all such like Cases which are out of the Statute of Uses, this Court of *Chancery*, if any Complaint be, will order the Parties trusted to perform the Trust.

If I, without any consideration, bargain and sell my Land by Indenture, to one and his Heirs, to the use of another and his Heirs (which is a Use upon a Use) it seems the Court will order this: But if it were in consideration of money by him paid, here (it seems) the express Use is void, both in Law and Equity.

And if a Woman, in consideration of four hundred pounds paid her by her Son, bargain and sell her Land by Indenture, to him and his Heirs, to the use of her self for life, and after, of the Heirs of her Son; in which Case, by Law, the Fee-simple is to the Son presently, and the use for life to

to the Mother void ; nor is there, as it seems, any relief for her in this Court in a way of Equity, because of the consideration paid ; but if there were no consideration, on the contrary, *Tosbil* 188.

A voluntary Conveyance was made to Friends in Trust, to the use of the Mans own Children, With a remainder over ; the Feoffor being indebted much money, the Court enabled him to sell part of it to pay his Debts, *Grants Case, Tosbil* 43.

If one that hath Land in Trust, convey it to one that had no notice of it, and he convey it to one that had no notice of it, in this case he that had no notice is seised to the first uses, *Pills Case, Tosbil* 185.

If one convey his Lands to Friends in trust, and after sell the Inheritance, the Trust in Equity goes to the Purchasor, *Tosbil* 44.

Copy-hold was surrendered to the use of *J. S.* to the intent that he should pay an Annuity to a third person, the which he refused, the Court ordered him to pay it, with all the Arrears, *Tosbil* 107.

Of Chattels real, and term of Years.

IF I be seised of Land in Fee, and convey it to *D. L.* and his Heirs, to the use of *W. S.* his Executors and Administrators, for 20 years, or for any other number of years ; in this case the Use will be executed within the Statute : But in case where I be possessed of a term of years in being, and grant it to Friends to any uses and purposes in trust, this is out of the Statute of Uses, and orderable in the *Chancery* only ; where, if the Trust be broken, I must have remedy.

One possessed of a term of years, conveys it to Friends in Trust, to the use of *D.* for life, and after, of the Heirs-males of his Body ; in this case the Court resolved and ordered, that *D.* so long as he hath an Heir may dispose of it, and that an Intail of, or out of a Chattel, is not good : but a remainder in tail of a Trust, may be ordered in Equity, the Judges agreeing to it, *Tattons Case, 2 Jas. Tosbil* 33.

The general Trust of an Executor is to pay Debts and Legacies, and for the Surplusage, to account to the Ordinary, *Ad pios usus*.

Henry Earl of Derby conveyed certain Leased Lands in trust

to *Doughby* his Servant, for payment of his Debts ; and upon a mediation of an end of Controversies between the Daughter of *Ferdinand*, eldest son of *Henry*, Earl; and *William* his youngest son, now Earl, it was ordered and agreed, that *William* the now Earl should pay all his fathers Debts : Whereupon *Doughby* conveyed all those Leases to *William*, and after the Creditors sued him in *Chancery*, but had no relief, and were ordered to pursue their remedy against Earl *William*, *Hill. 1 Jac. Caries Reports 25.*

The Plaintiffs Wife conveyed away her Estate to the Defendant her Son before marriage, and after the Defendant conveyed it to his Children ; in this case the Court conceiving it to be done without any consideration, did decree it for the Plaintiff, against the Defendant and his Children, *Poveys Case, Tostil 98.*

Of Chattels Personal, or Goods.

IF I deliver Money or Goods, or cause a Statute, Bond, or other Especialty to be made to another to my use, or to any purposes or intents in trust, and he perform not the trust, I may compel him to it, or to give me recompence for the breach of the trust here ; and therefore, if he dispose the Money or Goods to his own, or any other use than I appointed it, or will not dispose it according to my mind, or release, or discharge the Duty, my remedy is by *Subpœna* in this Court ; and if in these Cases the Goods or Money be taken from him, or he have any injury from them, he must sue for remedy, and I may compel him to it here, *7 Ed. 4. 14. 29. Cromptons Jurisdiction, 43, 62, 65. Brook, Feofment 60.*

If a Statute be made to *A.* and *B.* to the use of *A.* alone, and the Conusor get a Release of it from *B.* alone, in this case *A.* shall have remedy here against them both (as sonie say, against *A.* only, and not against the Conusor) See *Caries Rep. 14. & 15.*

Of Bargains and Agreements, or Promises.

Articles of Agreement were briefly drawn between two, and their hands to it, for the sale and assurance of Lands for money ; the Seller refused, and upon complaint here, was ordered to make the Assurance according to the Agreement, the

the manner of the Assurance referred to a Master of the *Chancery*, *Chivers Case*, *Hill. 4 Car.*

A Suit was brought here upon a Parol Agreement, to execute an Assurance of Land upon a Marriage Agreement; the Case thus :

A Suitor to *B* the Brother of *A* comes to *B* and tells her, that if she will marry his Brother, he will assure her of 1000 a year Land for her Joynture, and she did marry him, and after he refused : It was decreed in this Court, and the Court of Requests both, that he shall be compelled to it ; and where it is said, that heretofore the *Chancery* did not use to decree Parol Agreements for Assurance of Land, it is now otherwise, for where there is any execution of it, by payments of all, or any considerable part of the money for the Land, there the Court doth decree it.

In the *Exchequer* one sued by *English Bill* upon a Parol Agreement, to have Land assured ; and shewed that he had provided two thousand pounds (the Purchase-money) to his great loss, &c. and the other refused to assure the Land : In this Case the Court would not decree the assurance of the Land, but decreed he should pay the Plaintiffs Damages for his loss. So in 13 *Car. Olivers Case*.

The Agreement was to convey the Land, as Council should advise, the Paper-book drawn, and agreed on to be ingrossed, and then the Seller refused to proceed : in this case the Court would not declare it to be done, because no Articles nor money paid, but a bare Parol Agreement ; and yet some special circumstance may make this binding ; and therefore a verbal Agreement between a Lord and Tenant, because the Tenant was an ancient Tenant and hath been at charge of building, was decreed, *Kings Case*, and *Hunts Case*, *Tothil* 65. 56.

A covenants with *B* upon the Marriage of his Daughter, to levy a Fine of the Land to *D*. And the Daughter being dead, and some of the money unpaid, *A* sold away the Land to others : In this Case he was ordered for 100 Marks to make the Estate good, *Mich. 8 Car. Pagets Case*, *Tothil* 47. 48.

A Bill was preferred here, supposing 10 s. paid, and 2000 l. to be paid for Land, to have the Land assured ; and upon Demurrer it was over-ruled, because it may be, to prepare for an Action of the Case ; but it seems, in this case the Court would not decree the Assurance, *Trin. 38 Eliz. Williams Case*, *Tothil*

The Customs of a Mannor were in question between Lord and Tenants; and Tenant and Tenant : And a general Agreement made by Deed indented and inrolled here, and a Bill to establish it, and nothing could be found but the Deed ; and yet the Court would not alter it, albeit it was objected, that the Lord was at the time of the Agreement, Tenant in Tail, and some of the Tenants Infants, and Feme-Coverts, *Caries Reports* 22.

If one enter into a Statute to *J. S.* who doth afterwards by Indenture of Agreement, promise and agree with the Conu-see, that in case the Conuulor did fail of payment, Execution should be done upon some certain Land onely : In this Case, if after it he shall sue Execution upon any other Lands, the party grieved may have relief here, and compel him to perform his Agreement, and have Injunction also, if he desire it, *Pulvertotts Case, Caries Reports* 37.

The Plaintiffs Bill was, that he leased a house to the Defendant, and did covenant to repair it, and then the Defendant did covenant to keep it so ; and that the Defendant, as well to make the Plaintiff break his Covenant, as to free himself from his Covenant, did interrupt and threaten the Workmen, so that they durst not go on, and so the houses are decayed, and the Plaintiff without remedy. The Defendant demurred, pretending the Plaintiff had Remedy by Law, but it was over-ruled and put to answer ; *Caries Reports*, 59.

A Bill was brought to be relieved against the Defendant, as Brother and Heir ; for that the Plaintiff had paid to his Deceased Brother 34 *l.* for a Lease, and he dyed before it was made, and therefore desired his Lease or his Money, and was relieved, *Caries Reports* 77.

One Joynt-Tenant promised the other, lying on his Death-bed, he would not take advantage of the Survivorship, but suffer him to dispose of it by his Will, by which he devised part of the payment of his Debts, and the Survivor was ordered to make the Estate accordingly ; *Caries Reports*, 81.

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The Plaintiff bought of the Defendant the Reversion of a Copy-hold which he could not enjoy, as was confessed by the Defendants Answer; he was ordered by the Court to shew cause why he should not repay the money back again, which he had received on the Bargain, *Caries Reports* 93.

One Brought his Bill to be relieved here upon a Promise made to him by the Defendant, to surrender a Lease upon the payment of a hundred Marks; and because the matter was meet for the Common-Law, he had no relief, *Caries Reports* 95, 97.

The Bayliffs of a Town promis'd a Lease, the Court upon this would not give any relief against any of their Successors, but against the same Persons, as common Persons upon the Promise, *Caries Reports* 103.

What Mispriptions in Conveyances, or other Deeds, are relievable here.

W Here there is any mistake in a Deed, so that it is not made in pursuance of the intent and agreement of the party, this Court gives relief.

If the word Heirs, being in Fee-simple, or the like, be omitted, or that part of the Land bought and sold be left out of the Deed, and that it do appear that the Conveyance was made upon good consideration, the Court in this case will rectifie: See to this purpose *Caries Reports*, 16, & 17.

Dean and Chapter of *Bristol* made a Lease, mistaking the name of the Corporation; and the Court held, that for Leases made for some time of continuance, and upon good consideration, there should be relief given here, *Caries Reports* 32.

The Lessee in the Lease was not named in the Premises of the Lease, but in the *Habendum* only, decreed to be good; and being referred to the two Chief Justices, and the Chief Baron, was by them certified to be good in Law, *Butlers Case*, 22 *Eliz. Caries Reports* 88.

One brought his Bill here to be relieved, for that he had conveyed by the Deed more Land than was intended, and agreed; In this Case, because it appeared that the Defendant was a Purchaser, upon a valuable consideration, the Court would not relieve the Plaintiff, *Cliffords Case*, 4 *Jac. in Chanbery*: and yet where more Lands paied by a Fine than was

intended, the party was relieved here by the Judges consent, *Caries Reports* 20.

Mistakes in making of a Bond in either of the Parties Names, may be holpen here, *Colsons Case, Tothil* 7.

If a Power be reserved to make Leases by a Covenant, without transmutation of the Possession, no help can be here, because it is void in Law: and if it be upon a change of Possession, and the Power be not precisely followed, that is, doubtful, and rather more strong against help, for then the Estate works, and the Power gone, and upon Wills no help. See *Caries Reports*.

If one be bound to me for Money, and the same day, after the sealing of the Bond, I give him a Release for other things, which by mistake is made too general, whereby this Bond is also released, in this case I may be relieved here, and I shall receive the Money notwithstanding, *7 ops Case, Tothil* 27.

Haddam the Husband, was ordered to procure his Wife to levy a Fine, and to enter into a new Bond of 500*l.* because the old Bond was worth nothing, by the mistake of the Writer, *10 Jac. Tothil* 140.

Where an Assurance of Land is made defective, this Court will inforce the perfecting of it.

WHereas a Conveyance is made for Lands or Tenements, and it is found defective, and the Estate not well executed to the Purchasor, according to the intent of Parties, for lack of words sufficient in the Deed, or for lack of Livery of Seisin, Attornment, Irolment, or the like, and there was a good consideration given for the Land; in such like Cases, the Court, in behalf of the Purchasor, will compel the party in whose power it is, to perfect the Estate, *Tothil* 44. 48. 182. 183. 138.

Where a man for money, or other valuable consideration, sells Land to one, and the word *Heir* is left out in the *Habendum*; in this case the Party who sells shall be compelled to amend it: And so when less is granted than was intended, and so for any other mistakes, *Caries Reports* 16, 17.

A Mesuage was demised (*cum pertinentiis* only); and because sundry Lands had been occupied formerly therewith for the same Rent, and by Lease of the same Words, the Lord

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Chancellor *Bromley*, and the Judges order, it shall all pass; though perhaps in Law they will not pass by these words; but it seems in such like Cases it is very considerable in Equity, what the value of the Land is, and what Money is given; for if the House with the Appurtenances be sufficient for the Money, unless the intent of the party were to grant the whole; it seems agreeable to equity that there should be no further Extent made of the words, than what the Law makes.

The Ancestor takes money for a Lease, and dies before it is made, the Heir must make it good, or repay the Money, *Caries Reports* 7.

Where a man for Money, or other valuable consideration, sells Land by Deed, but Livery of Seisin is omitted, I may compell him afterwards to do it by this Court: So likewise, if upon the same consideration he sell me Land in two Counties, and give me Livery of Seisin of the Land onely in one County, this Court will order him to make Livery of the Land in the other County, or pay back part of the Money, *Caries Reports* 17.

Where a Conveyance is imperfect through the want of the Tenants Attornment; the Tenant in this place shall be compelled by this Court to Attorn; and so it was decreed in *Highway Term*, 3 *Car*.

A. Was Lessee for 21 years, and Leased to *B.* for ten years, rendering Rent, *A.* without the privity of *B.* did grant the Reversion to *C.* and *B.* refused to Attorn; and *C.* thereupon sued *B.* in *Chancery*, to compel him to Attorn: And in this Case it was decreed by the Master of the Rolls, with the assent of the Masters of the *Chancery*, that he should Attorn, and pay the Arrearages; But Justice *Whitlock* then Assistant, was utterly against it; and of his Opinion were the two Chief Justices, Chief Baron, and Justice *Dodridge*: but they all agreed, the Parties themselves to the Assurance, may be compelled to make Livery; and it hath been often denyed here to compel him to Attorn, who is at liberty by Law, especially where the Party quarrelleth at the Tenants Estate, or entreth into part of the Land, or hath covenanted for recompence; in case of not Attornment, *Caries Reports*, 4.

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Where the Conveyance is made without good consideration, this Court of Chancery will give no relief.

FOr instance, where there is a Rent granted, and no Deed to warrant it, and nothing is given for it, or a Reversion is granted, and nothing is given for it; this Court will not enforce the Grantor to perfect it.

Where an Estate was made by Covenant, and not good by Law, it was ordered by this Court to be made good, *Princes case*, 40 *Eliz. Tothil* 85.

A Deed which was not intolled, was by this Court decreed against the Heir of the Land; but agreed, it should not bind any other Estate challenged by Survivorship, or otherwise; *Parks case*, 14 *Car. Tothil* 54.

A Bill was here exhibited, to be relieved against the Defendant, who would have avoided Estate for lack of Livery of Seisin; and it appear'd that the Plaintiff had enjoy'd it quietly 25 years: in this case it was decreed he should continue the quiet possession without Livery of Seisin, *Ridows case*, 17 *Jac. Tothil* 54.

Upon Promises concerning Goods and Debts.

WHere there is a Contract made for Goods or Chattels, wherein the Contractor hath any wrong done him, if he gives (*Quid pro quo*) that so it appears there is a good consideration in it: In this case the Contractor may be here relieved; but on the contrary, where there is no consideration, for there is *Nudum pactum*.

Where a man makes a promise without consideration, to build a man a house, or make him such or such Goods, he shall not here be compelled to it, *Cromptons Jurisdiction* 49.

A spontaneous and general Promise, without any consideration, was made by the Son to pay his Fathers Debts, (no advancement coming to him by his Father) he being sued here, the Cause was dismissed, *Alexanders case*; 7 *Car.*

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Where the Obligee agrees with the Obligor, to give him Day for payment of the Debt, and he sueth him or his Surety before the Day given, here this Court will relieve him.

What relief shall be had where there is extremity used, upon a Statute, Mortgage, Bond, or other Engagement.

WHere a man by way of Mortgage conveys Lands to another for Security for Money lent ; in this Case, albeit the time of Redemption be past, yet upon paying of the principal Money, Interest and Damages, he may have the Land again by Decree of this Court ; yet where the Mortgage hath bin of long continuance, as of twenty years, or upwards, this Court will hardly give back the Land, unless in some Cases extraordinary : And if the Mortgage make a Feoffment of it to a stranger, and so extinguish the Condition, unless it appear to be to the end to pay the Debt, the Feoffee (perhaps) may not have this advantage, *Caries Reports 53. Growthers Case, 39. Eliz. Tothil 79.*

A Copy-holder in Fee, surrendered to the use of one and his Heirs, upon condition of Redemption ; after this computing his Debts, and writing them down, he doth will part of his Land shall be sold to pay his Debts ; after his Death, one of the Creditors doth pay the Money at the Day of the Mortgage, yet the Surrender was inrolled, and another Creditor sued him and the Heir here, and had a Decree that the Land should be sold to pay the Debts, and if any remained, it should go to the Heir, *Caries Reports 7.*

Where there was a Lessee for years rendring Rent, and two men striving for the Reversion, he exhibiting his Bill against him, upon payment of his Money into the Court, according to his Lease, he had an Injunction to forbid them both any further to trouble him, *Caries Reports 46, 47.*

Where the Conusee of a Statute extends the Lands in the hands of one of the Purchasers, and spares other Purchasers : in this Case he may be compelled to extend upon the whole in all their hands, *Caries Reports 111, 112.*

Where a man grants a Rent-charge out of all his Lands, and after sells it by parcels to divers persons, and the Grantee
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force one onely to pay it; the party so paying it may here be relieved, and force the rest to contribute, and the Grantee to take no more of him than what is answerable to his proportion of Land; but in such case he must be sure he make all that have bought any of the Land, Defendants; that so he may make them chargeable with the Rent; and then they must shew cause why they should not contribute, *Caries Reports* 23, 92.

When the Conusee in a Statute, or Plaintiff in a Judgment, hath received satisfaction, the Plaintiff in *Chancery*, or Conusor, his Heirs, Executors, or Administrators; or a Purchaser charged or chargeable by it, may force him, if he be living, or his Executors, or his Administrators, if he be dead to acknowledge satisfaction upon the Judgment, or to deliver up the Statute: and if Statutes be very antient, and nothing done upon them, this Court will inforce the Owners of them to deliver them up without satisfaction. In like case, this Court will force the delivery up of old Bonds, *Tohil* 178, 179. *Caries Reports* 145, 146.

Where the Plaintiff had Judgment and Execution against the Defendant for three hundred pounds, he was by this Court here ordered to take it out for one hundred pounds onely, *Caries Reports* 51.

Where a man upon an Obligation, &c. either at or after the Day, according to Law, hath paid any money, and hath no Acquittance for it; or have otherwise, at, or after the Day satisfied it, and hath no Acquittance for it, and it appears the Obligee hath accepted it, and is satisfied, and yet keeps the Bond, and refuseth to give the party a Discharge; in these Cases, he or his Executors, &c. after his Death, may inforce him, his Executors, &c. after his Death, in this Court to discharge it, and to deliver up the Ingagement, *Caries Reports* 74. *Tohil* 26, 27.

Where a man doth his utmost endeavour to pay Money at the Day; and to that purpose, after he hath provided it, he is robbed, or let by some other chance, and afterwards makes tender of it in some short time. So where part of the money is paid; and yet the whole Ingagement lies, and the party that hath it doth refuse to deliver it up, or to receive the rest of his money, it being tendred shortly after the Day, or acknowledge what is paid, &c. *Caries Reports* 1.

So where the Bond is to do any thing other than the payment of money, and the thing is done, and the Condition performed, *Caries Reports* 45, 46.

Where a man takes a double Security for one and the same Debt: as where he takes a Bond or a Bill, and Goods in Pawn, or any thing of the same nature; this Court will enforce him that hath taken this double Security, to deliver up one of them, *Tothil* 26, 27.

Where I appoint a Scrivener to put out and receive my money, and by my Direction he doth receive the money due upon a Bond at the Day, and the Bond remain in my hands, and I refuse to deliver it up, this Court will enforce the Delivery of it up, *Hums case, 24 Jac. Tothil* 175.

Where a man enters into a Bond, or any other Ingagement for money unlawfully gotten; as at Dice or Cards, or upon a cheating Contract, or the like; this Court will see him relieved against it, and have it took up, or cancelled, *Tothil* 23, 24.

Where a man gives an Ingagement for that that is nothing worth, and which is neither gain to the Obligator, nor loss to the Obligee; as for Debts, things in Action not recoverable, here this Court will give relief.

A. Had a Son he intended to present to the Church of *Dale*, and he being sickly, presented *C.* for the Present, taking Bond of him for 600 *l.* to resign upon Request; *C.* is instituted and inducted: After the Son *A.* becomes healthy, and *C.* is required to resign; he refused, his Bond is sued, and he comes into this Court for relief, it was denied to him, and the Bond is agreed to be good in Law and Equity, *Trin. 6. Car. Wood and Berries case in Chancery, Tothil* 26, 27.

Where a man makes a Bond not to Marry without the consent of Friends, and the Bond becoming forfeit, is sued, it seems this Bond is not good, and this Court will give the Obligor relief, *Tothil* 26, 27.

Where money is paid upon the Redemption of a Mortgage by Indenture, without taking any Acquittance, this Court will enforce the Mortgagee to bring in the Indenture to be cancelled here, *Caries Reports* 17.

The Son and the Father were bound to the Defendant in 500 *l.* to stand to the Award of the Lord Chief Justice, who ordered that the Son who was Plaintiff, and had the Reversion in Fee, and the Father who had the Estate for life, should make

such

such Assurance as the Defendant should reasonably devise. The Defendant in pursuance thereof, tendered an Assurance to the Father to be sealed; who being old and blind, desired time to advise with his Friends; the Plaintiff the Son sealed, and the Father did afterwards offer to Seal; and then the Defendant said, he did not care for his Seal, but he put the Bond in Suit upon the Fathers refusal formerly, and it was staid by Order of this Court, *Caries Reports* 105.

In any of the afore-recited Cases, if the party to whom such Engagement is made, make use of it in any other Court by way of Suit against him that entered into it, he may in this Court by Injunction stay the Suit, and shall have the matter ordered here, as in Equity is fit to be done, *Tosbil* 23, 24. *Sucklins* case, 11 *Car.*

This Court gives relief against the Injuries of other Courts of Justice, by their over-nice and strict observation of the Rules of the Law.

Where there is an Extremity used against a man upon a Judgment had against him in any Court at Law, for Money or Land; this Court, although it will not make void the Judgment, yet will it order the persons, as it shall see cause in Equity; and this was resolved upon a special Debate by the Kings Command in 14 *Jac.*

In all Cases, tending to overthrow of Judgments had in other Courts, this Court neither may nor will examine or revoke them; for if so, it would render business endless. See *Caries Reports* 74, 75.

The Heir coming into his Fathers house, had of his Fathers Goods worth five Shillings and the Defendant sued a Bond of 500 *l.* against the Heir, as Executor of his own wrong, and proving he sold or gave away the Goods, a Verdict passed for the whole 500 *l.* which appearing by the Certificate of the Justices of Assize, an Injunction was granted to stay all proceeding in this Action, and to forbid any new Action, till the Court have determined the matter, *Caries Reports* 49.

A Debt upon a single Bill satisfied, and the Bill not delivered, was sued, and Execution gotten, and the party was by this Court relieved, 22 *Eliz. Owens* Case, *Caries Reports* 74.

If one man do unduly get a Judgement in any Court in the name of another, relief may be had here, *Caries Reports* 76.

A drunken man being sued by another for words spoken in his drink, tending to Defamation, sought for relief here, but could have none, *Qui peccat ebrius, luat sobrius*, *Caries Reports* 93.

One exhibiteth his Bill for relief upon an Obligation of 300 *l.* which he entred into, conditioned for the making a Joynter to his Wife, upon condition of 174 *l.* promised to him by the Defendant in Marriage, which was never paid to him; he is sued at Common Law upon the Bond: In this case an Injunction was ordered to stay proceedings, *Caries Reports* 112.

In what Cases the Tenants Copy-holder shall be relieved, against the hard dealing of the Lord of the Mannor.

First, If the Lord will out his Tenant that pays his Rent, or does his services; or if the Tenant surrender in Court, to the use of another, and the Lord refuse to admit him, to whose use the surrender was made, or will not keep Court for the benefit of his Copy-holder, or exact uncertain Fees, they being certain; this Court in these Cases will give relief.

Secondly, If he will not admit the Tenant-Copy-holder upon a Descent.

Thirdly, If the Tenant Copy-holder be outed of his Copyhold, and the Lord will not hold a Court whereat he may sue for his Right.

Fourthly, If a false Judgment be had against a Tenant Copy-holder, and he petition to the Lord to redress it, and he refuse it.

Fifthly, If the Tenant Copy-holder petition the Lord to grant him a License to let, and refuse it.

Sixthly, A Woman Copy-holder for life, the Reversion is granted to two for their lives, *cum post mortem, vel foris-facturam*, of a Woman, it shall happen, and she take a Husband that doth surrender to the first in Reversion, who is admitted and dieth, and after the next desireth admittance, and could not have it, but the Lord entereth as an Occupant, (as he might) and the Husband and Wife were willing to surrender to him the Reversion for life, and the Lord refusing to keep a Court, or leave the possession, was ordered to do both in this

this Court, *Totbil* 3. 44. 45. *Caries Reports* 3. *Kitchin* 81. 89.

A Copy-hold granted by the Lord, at a Court held out of the Mannor, made good against the Lord by Decree of this Court, *Marks Case*, *Totbil* 145.

Where the Lord imposes an unreasonable Fine upon his Tenant upon a surrender, &c. The reasonableness of the Fine shall be here adjudged of, and this Court will give relief. A years value of the Land hath been here allowed good, *Caries Reports*, 54.

This Court gives relief to the Surety against the principal Debtor or Creditor.

Where there is a Debtor with a Surety and Creditor, and the principal Debtor and Creditor by compact, and agreement without the privity of him who is Surety, continues the Debt after the first day of Payment, when the Surety doth suppose it to be paid: in this case this Court will compel the Creditor to take his relief from the principal Debtor, and discharge the Surety, his Heirs, Executors, &c. *Miles Case*, 5 *Car. Hares Case*, 10 *Fac. Saunders Case*, 10 *Fac. Totbil*. 181.

Where there is a Detainer of any Lands, Deeds, or Goods, this Court will give relief towards the discovery and recovery of them.

As where a man hath Title to Lands, and intends to bring his Action, but cannot discover who is Tenant to the Land: In this case he may sue the Occupyer in this Court, and he will be enforced to shew what he, or any under whom he holds Claims, to his knowledge, and then he may know whom to sue, and upon what grounds.

Where the Defendant held beyond his term, this Court enforced him to shew what term his Lease was for, *Mich. 6 Car. Totbil* 183.

The Conufee of a Statute did by the power of this Court enforce a Lessee for years, to declare all the particulars of his Lease, that so he might discover whether it were extendable or not, 11 *Car. Totbil*. 183. *Creswells Case*, *Totbil* 9 *Caries Reports* 18.

Where Writings are detained from a man, if the Court do see cause, it will enforce the Defendant to bring the Writings into Court, by a *Ducens tecum*, *Caries Reports* 43, 52, 53, 57.

This Court gives relief for the recovery of Land, Debt, or Duty, where the Law gives none.

Where a man hath a just title to Land, but hath lost his Conveyances, this Court will give relief for the recovery of his Land, *Caries Reports* 24 *Goffats case*.

Where a man hath a good Title to Rent, but no means to gain it; as if the Rent be seck, and he never had Seisin of it, or any other Rent wherein he hath had no Attornment of the Tenant, or supposing the Rent is by some accident (without any recompence for it) discharged: so if it had been usually paid, but I can shew no Deed for it: In these and the like cases this Court will give relief for the recovery of it, *Tothil* 71, 172, 173.

Where a man hath a Debt due to him upon Especialty, and hath lost his Writing, or cannot come at it: in this Case if he have witness to prove it, he may be relieved here for the recovery of it, *Caries Reports* 25.

Where an *Elegit* was returned and filed, and the time thereof elapsed, and yet the Plaintiff unsatisfied of his Debt, this Court will give him relief by reviving the *Elegit*, *Tothil* 179.

Where a man makes a Will with several Devises, this Court will direct how they shall be taken and performed in Equity.

The meaning of a Will is to be performed here, *Cobs case*, *Tothil* 141.

Where there was a Devise void in Law, by reason of a misrecital of a Grant, and lack of an Attornment, this Court did here decree it to be good, *Bacons case*, *Tothil* 79.

This Court doth give relief against a fraudulent practice to avoid a Lease, *Caries Reports* 18, 22.

So likewise to avoid a Debt, *Caries Reports* 18.

This Court will give relief in avoiding Conveyances fraudulently made; as where there is a Suit depending between two for Land, and the Defendant hanging the Suit, make secret Conveyances of the Land, this Court will order him to discharge the Land thereof, *Tothil* 108. *Harbynes case*, *Tothil* 9.

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Thus much shall suffice to have spoken concerning the generality of the Causes the Court of Chancery takes notice of, in which, for your further satisfaction, I refer to the Reports of Mr. Tothil; and Sir George Carew.

It remains we should now come to the practick part of it, which directeth for the most part, their whole manner of Proceedings; wherein, for method sake, we will begin with their first Process called Subpoena.

THis Subpoena is the leading Process of this Court, as to the procedure by Bill and Answer, and this doth require the Defendants appearance in this Court by a certain day, under a certain pain, to make Answer to the Complaint of the Plaintiff, which is indeed the Bill, which formerly was wont to be put in before the Subpoena was sued forth, but now otherwise used; this is called a Subpoena to Answer, and distinguished by that name, in respect there are seven other Subpoenas in order to further Proceedings: as a Subpoena for Costs, a Subpoena to make a better Answer, a Subpoena to rejoin, a Subpoena to hear Judgment, a Subpoena for Witnesses to testify, &c. a Subpoena Decens tecum, &c. for Writings, Evidences, &c.

Touching the Subpoena to Answer, you must be very careful there be no mistake in the Body of the Writ, for that may prejudice the Plaintiff, and the Defendant may take advantage, if he find any; but if there be a mistake in the Label only of the Writ, no advantage is to be taken by it.

This Writ may be made returnable three ways, either upon the common days of Return; as from the Day of *Easter*, in 15 days, &c. or upon a day certain, after any of the usual Returns, or after any the great Feasts, from whence the Returns take their Names.

This word (*Next*) must be added where it is requisite; as where the great Feasts be either to come or past.

The Writ of Subpoena is to be served before the Return thereof be past, which they usually do, either by the delivery of

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of the Writ it self under the Seal, to the person of the Defendant, or by shewing the Writ under Seal to him, delivering him a Note or Label of the Day of his appearance; and this is more usual when they are more persons than one in the *Subpœna*, whereby the body of the Writ may be reserved to be left with the last.

Or else the Writ may be left at the Defendants dwelling house with one of his Family, or at his place of residence. See Collection of Orders, &c.

It is conceived it may be a good service to leave the Writ hanging upon the Door of the House, or to put it into the House under the Door, or within the Window of the House where the party doth dwell, or usually reside. But that is where it is presumed, it afterwards comes to his hands, or that he might be in the House at the time, or had notice of it.

Where a *Subpœna* is served on the self-same day whereon it is returnable, it is a good service if it be before Noon, and the rising of the Court in *Chancery*; and the Defendant so served, shall be bound to an Appearance with all speed.

Where a *Subpœna* is had against a Husband and Wife, and the Husband alone is served, and hath notice that it is against him and his Wife, this is a good service as to both, and for want of Appearance, an Attachment may be had, either against the Wife only, or against both. To which purpose, see *Carr's Reports* 89, 101, 103, 106, 109, 110.

The *Subpœna* being served, the Bill must be put in due time; or else if the Defendant appear, and no Bill be filed, they will get costs. To prevent which, take notice what time is prefixed for exhibiting the Bill after the day of the return of the *Subpœna*.

If the *Subpœna* be returnable upon a general Return Day, as *Craftino, Ostabis, Tres. Mens.* &c. after such or such a Feast, then hath the Plaintiff time to put in his Bill until the second Day before Noon next following the fourth Day following every one of the said Returns; and you must account the Return-Day, and the fourth Day after it, for two of the said four Days.

But where the *Subpœna* is returnable upon such or such a certain

certain day of the moneth, then the Bill may be filed the second day after it before Dinner.

Where the Bill is not filed, and the *Subpœna* returnable on a day certain; as on any day of the Moneth, the Defendants appearance being entred, his Attorney may prefer Costs the next day after: And if the Bill comes not in the next day after Costs so preferred, before noon, or presently after Dinner, the Defendant is discharged with such Costs as the Master of the Court taxes him.

Where the *Subpœna* is made returnable on a Return-day, in such case, the next day after the fourth day, is Costs-day; and if the Bill come not in the next day at Noon, or presently after Dinner, (the Defendant having preferred his Costs the day before) is discharged from attendance with his Costs.

Where the Costs are not voluntarily paid for want of a Bill, either by the Plaintiff himself, or his Clerk, to the Defendant or his Clerk, in such case the Defendant may have a *Subpœna* whereby to command the Complainant, presently upon sight thereof to pay the Defendant, or the bringer thereof the said Costs: And this *Subpœna* must be served on the Plaintiff personally, and upon such service, if the Complainant do refuse to pay the said Costs accordingly, in such case the Defendant may (upon *Affidavit* made, that the *Subpœna* for Costs was served) have an Attachment directed to the Sheriff of the County where the Complainant lives, to Attach the Complainant for the said Costs.

And if the Sheriff of the County make return upon that Attachment, that the Complainant cannot be found, then an Attachment with Proclamation may be sued forth against him: And that the Proclamation being likewise returned by the Sheriff as aforesaid, then a Commission of Rebellion may be sued forth against the Complainant.

On the other side, if the Plaintiff do in due time file his Bill, and the Defendant appeareth not the next day after Costs-day, then the Complainant upon Oath made, that the Defendant was served with a *Subpœna*, may have an Attachment, and further Process, in case the Sheriff return, The Party is not to be found, &c.

The *Affidavit* that must be made, of the service of the *Subpœna*, must be made according as the manner of the service was; for if the *Affidavit* made, do not prove a good service

vice was : for if the *Affidavit* made do not prove a good service as before, no Attachment can be had upon it, and therefore he must swear as followeth.

That he delivered the *Subpœna* to the Defendant, or that he shewed the *Subpœna* to the Defendant, under the Seal of the Court, and delivered to him a note of the day of his appearance, or a Label of the *Subpœna*.

Or that he left the *Subpœna* at the Defendants dwelling-house or Lodging where the Defendant most abideth.

Or he may make *Affidavit* that he heard the Defendant confess that he was served with a *Subpœna*.

If the party that makes *Affidavit* can swear, that he saw another (naming him) to serve the Writ as before ; this will be sufficient to maintain the Attachment.

There can be no Attachment regularly made out against the Defendant for not appearing, until there be a certain and positive Oath made of the time, place, and manner of serving the *Subpœna*, inserting the return of the Writ.

And where any person served with a *Subpœna* doth injury, or wrong, either by word or deed to the party who acted in the service of it, or doth set at nought or contemn the Writ it self, or the authority of the Court from whence it issues, upon Oath made thereof, and motion thereupon, such person will be committed to the Fleet, &c. *Caries Reports*, 19, 92, 110.

Where there is appearance made by the Defendant, within the time limited, and by the Bill filed : In such case the Complainants Attorney may give unto the Defendants Attorney on the said day after the Costs day, a Rule, that the Defendant do make answer to the Complainants Bill by the same day seven-night then next to come. This rule and day must be entered into the Register ; and in case the Defendant fail to make answer, by that prefixed day so entered, or if he do not otherwise satisfy the Court by shewing sufficient cause and occasion of his delay, then the Complainants Attorney may have an Attachment against the Defendant.

Now this Writ of Attachment cannot be duely had, but where the *Subpœna* foregoing is duly obtained and served, for if the *Subpœna* be counterfeit, or if true, and not legally served, this Writ of Attachment in these cases is unduly obtained, and the Defendant Arrested by it, upon disclosing the matter to the Court, will be discharged thereof.

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An Attachment duly gotten, for not appearing, may not be discharged, till the Defendant have first paid twenty shillings Costs, if the serving of the *Subpœna* were upon his person, otherwise it is ten shillings, and every succeeding Process double so much: And upon payment thereof he is to be discharged of course. See *Caries Reports*, 32, 72, 79, 94, 105. *Tothil*.

The Husband appeared, and the Wife not; an Attachment was granted against them both, *Abels Case*, 19 *Eliz. Caries Reports* 65.

So he alone appeared, and put in a Demurrer in both their names, without excusing her, Attachment was granted against both; *Spicers Case*, *Caries Reports* 39.

The Defendant made Oath, he could not answer without sight of Evidences, and had time given him, and then afterwards put in a Demurrer: this Writ went out against him, *Pesch. 21 Eliz. Farmers Case*.

Where the Defendant is served with a *Subpœna*, and afterwards for not appearing, an Attachment issues against him; if he do not appear upon the Attachment, and the Sheriff do thereupon return (as in the like cases he doth) a *Non est inventus*, then there will issue forth against him a Proclamation of Rebellion, wherein observe, that this Process of contempt, and all Attachments in Process are to be discharged upon the Defendants payment, tender to, and refusal of it, by the Plaintiffs Clerk of the ordinary cases of Court, and filing of his Plea, Answer, or Demurrer, as the case is, without any motion in Court: And if the Plaintiff do prosecute the contempt afterwards, the Defendant will be discharged with Costs.

Where an Attachment is had, if the Sheriff do not make his Return, a day will be given, and if he do not by that time, the Court will set an Amerciament upon him. See *Caries Reports*, 44, 77, 78. *Collection of Orders, Tothil* 15.

Where any party is Attached, and afterwards Proclaimed, and he comes not in, but stands further out in contempt, in such case a Commission of Rebellion may be issued forth against him for the apprehension of him and bringing him to the *Fleet*, (the proper Prison of this Court.)

This Commission of Rebellion is sometimes directed to the Sheriff, and sometimes to private persons, as in the case of *Cage and Elrington, Trinity* 3. *Jac. Tothil* 37.

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This course is likewise taken against those that make not obedience to Orders or Decrees, to pay Costs or the like.

Where those private persons who are made Commissioners, having taken the person in contempt, suffer him to escape, they themselves will be committed till they bring him in; as in the case of *Sachevorell* against *Sachevorell*, *Hillary Term*, 18 *Jac. 10thil* 38.

If any person rescue one taken upon a Commission of Rebellion, the Rescuer is to be committed.

Where the Commissioners upon Commission of Rebellion, let the party in contempt go where he list, whereby he made an escape, they were ordered to be committed to the Fleet till they pay the Debt. See *Nelsons* case against *Telverton*, in *Trin.* 18 *Jac. 10thil* 39.

Where the party appears not, but stands further out in contempt, a Serjeant at Arms may be sent out to take him, and if he cannot take him, or that he resist, or having taken him, he make an escape, and so persist high in his contempt, in such cases a Sequestration may be had of his Land: And if the Suit be for Land, to be delivered to the Plaintiff by the Sheriff, or by other Commissioners for that purpose: as in the case of *Bales* against *Walley* and his Wife, *Caries Reports* 38, 58, 105, 106.

We proceed now to Bill and Answer.

THe Plaintiffs Bill is in effect the same that the Declaration after appearance had, is, either in the Kings-Bench or Common-Pleas, and lays down the cause of his complaint in Chancery, being such usually as is exempt from remedy at Common-Law, for that they insert commonly those words in the Bill that the Plaintiff hath not remedy at Law.

This Bill, by the practice of the present times may be put in after the *Subpœna* is both taken out and served, provided it comes in within the time before limited, to prevent Costs.

Upon one and the same *Subpœna* served, two Bills may be put in, provided the matter contained in them appear not to be one and the same cause, for if it do so, one of them may be dismissed with Costs, and where two Bills are so put in containing several matters, the Defendant must answer them both.

This Bill in Chancery, and all subsequent pleadings and proceed-

proceedings upon it, must be succinct and short, and not stuff with repetitions of Deeds, Writings or Records, (*in hac verba*) but the effects and substance of so much of them only as is pertinent and material to be set down, and that in brief terms, without long and needless traverses of such things as are not traverseable, tautologies, or impertinences.

It must not likewise contain any matter criminal or scandalous against the Defendant, or any other, and if it do, and concern the Defendant, he may refuse to answer it; and the Plaintiff and his Counsel whose hand is to the Bill, may be punished for it, and the party grieved may recover Costs against such Counsel.

This Bill must be put in under Counsels hand, who is carefully to peruse it, if at least it be not drawn by himself, and see that it be such as is before directed, and likewise the Counsel must take care that it be such for the matter of it as the Court will allow, and take cognizance of, and then he is to sign it.

Where any Bill contains matter not proper for this Court to give relief in, the Bill will be dismissed, and so likewise will it be if there wants Counsels hand to it, or if the Counsels hand be counterfeited or disallowed. See *Cases Reports* 89.

To this Bill in Chancery filed, the Defendant is to make answer, wherein many times he makes much delay, but in all cases of delay, he must upon Oath satisfy the Court of the causes of such his delay, which may be in several respects; as,

First, where the matter contained in the Bill is such, to which he cannot give answer, without conference had, with some other persons named in the Bill, or to whom the Bill refers.

Secondly, where the Bill chargeth the Defendant with having of Goods or Chattels of the Complainants, to make discovery what they are; in such case the Goods being in the Countrey, and he here, he may make Oath he cannot make perfect answer to the Plaintiffs Bill, without sight and perusal of the Goods: So likewise, where he cannot make direct answer, without sight of some Evidences or Writings which he hath in the Countrey, he may make Oath thereof; but in such cases, that place in the Countrey where those parties live, Goods, or Writings, or Evidences lie, must be above twenty miles

miles from *London*, for else he must answer within eight days after his appearance, unless further time be given him by Order.

Upon Oath made as aforesaid, then his answer will be spared till the first day of the next Term following.

There may likewise Oath be made by another person, either his Solicitor, Servant, or some Neighbor to the Defendant, that he is sick, or disabled for travel without danger of life.

Upon such Oaths made as aforesaid, if the Plaintiff refuse to allow of a *Dedimus Potestatem* on the behalf of the Defendant, for the taking his answer in the Countrey; This Court of Chancery upon Motion or Petition will order it, and the order that is so obtained must be carefully entred into the Registers Office, and the *Affidavit* upon which the Order is grounded, must be filed in the *Affidavit* Office.

Where the Defendant doth not appear, or that after he hath made his appearance, he doth not answer within the time limited him, nor by way of excuse sheweth any the reasons aforesaid, in such case an Attachment is as aforesaid, is awarded against him, which Attachment must be entred into the House-book of the Six Clerks Office, and likewise in the Registers Book, expressing the cause of the issuing of the said Attachment.

Where there is no day by rule given to the Defendant to answer, in such case the Defendant is at liberty to answer at any time during the Term.

And where the Defendant makes default within that time to make answer, then an Attachment may be sued forth against him of course, and the same with the cause thereof (as before) must be entred with the Register, (*viz.*) That the Defendant appeared, and went away without any answer.

Where the *Subpoena* is made returnable so near the end of the Term, that there cannot be a day given to the Defendant to answer: in such case the Defendant must at his peril answer by the same day seven-night next following the day of his appearance, although it be out of Term, for the Court of Chancery is always said to be open.

But where the *Subpoena* is returnable on the last return day of the Term it self, then the Defendant is at liberty to appear the first Return of the Term following.

But

But where the *Subpœna* is returnable upon a day certain although the day be the last day of the Term, the Defendant is bound to appear, and yet answer by that day seven-night next following the said appearance.

In all cases where the Defendant either makes oath, that he cannot answer without Writings, Evidences; &c. or conference with some other person; or that he have a *Dedimus Potestatem*, and a Commission to take his answer in the Country, the Defendant must at his peril procure his answer to be put in before the day after the first costs day of the next Term following, unless it be in *Trinity Term*; then in such case it must be put in the second day after the second return, or otherwise the Complainants Attorney may upon such his default make an Attachment against the Defendant for not answering by the day prefixed.

Where the Defendant lives in the Country, and hath a *Dedimus Potestatem* granted him for the taking of his answer to the Plaintiffs Bill, it hath bin formerly the course, that in case the Counsel find cause of Plea or Demurrer, that then the Defendant should move or petition to have a special *Dedimus Potestatem* by order to Answer, Plead, or Demurr, for that the Commissioners upon an ordinary *Dedimus*, had not power to take any thing but an answer.

But by the late Collection of Orders it is ordered, that where the Defendant is served with a *Subpœna ad respondendum*, and obtaineth a Commission to answer in the Countrey; he shall without more words have the same liberty thereby to answer, plead and demurr, as he had by the original Process, if he could have appeared in person. See *Collection of Orders*, 39.

Where the Defendant doth demurr, or put in any just Plea which he hath, to the disability of the person of the Plaintiff, or to the jurisdiction of the Court under the hand of learned Counsel, it will be received and filed, although the Defendant do not deliver the same in person, or by commission.

And if the Defendant do not put in his Demurrer, or Plea, into the Paper of Pleas and Demurrers, in the Registers Office appointed for that purpose, within eight daies after the same is put into the Court, that so the said Demurrer may be argued before the Lord Chancellor; as it shall fall in course; and where this is omitted to be done, the Plea and Demurrer is over-ruled of course, and the Plaintiff may take

take forth a *Subpœna* against the Defendant, to inforce him to make a better answer, and in order for costs according to the last rules and collections of orders.

Where a man exhibits his Bill in Chancery, and dyes, the suit depending, who ever have the Interest in the thing complained for, whether heir, executor, or administrator, they may put in a Bill of Revivor against the Defendant; or in case the Defendant dye, the Plaintiff may exhibit his Bill of Revivor against the heirs, executors, or administrators of the Defendant.

Where there is a Bill of Complaint exhibited against a man and his wife, and the matter containd in the Bill wholly concerns the wife, and they both make answer unto this Bill, and after they have made answer the Husband dyes, in this case a Bill of revive must be brought by the Complainant against the woman if he intend to proceed in that suit; and the reason is, for that the woman shall not be constrained to abide by that answer, which she together with her Husband, or solely as wife to the man, had formerly made unto the complainant, for that she was at time under coverture.

And in case she survives her Husband, and continues possessed or seised of the things in controversie in *Statu quo*, she may, as she shall think fit, make a new answer, and shall not be bound up or concluded by that answer, which she made during coverture, or solely as wife unto the man: and yet if she thinks fit, she may stand to that former answer of hers, and proceed accordingly in that Suit.

Where the Plaintiff exhibits his Bill in Chancery against a feme sole, and she appearing makes answer unto the Bill, and afterwards marryng, she comes under coverture, the Suit depending; In this case the Plaintiff may proceed against her and her husband, and shall not need any Bill of Revivor: and her husband shall be bound by that answer, which she made whilst a feme sole, for that she shall not advantage her self by her own Act.

Where on the other side the feme sole Plaintiff exhibits her Bill, and the Defendant makes answer unto it, and afterwards she intermarrieth, here there can be no further proceedings by the Husband and Wife without a Bill of Revivor, because she hath abated her suit by her own act of marriage, of which the Defendant may take his best advantage.

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Where the man and the wife exhibit a Bill of complaint, and to this the Defendant answereth, and the man dyeth, the woman shall be at her choice, whether she will exhibit a new Bill, or proceed upon the Bill by her husband and her self formerly exhibited.

Where there are two seisees of joint estates, or where they are executors of one Will, or Obligees, or Obligors; and they preffer a Bill in Chancery, to which the Defendant makes answer, and after one of them dies, here the survivor may proceed in his Suit against the Defendant, and shall need no Bill of Revivor.

Note, that the Bill of Revivor must pursue the first Bill exhibited, for where there is any variance between them, the Defendant may be discharged, and the Bill will be dismissed.

Where there are administrators, *Durante minore etate* of an infant executor, in the nature of a Guardian, and they sue on the infants behalf; and the Suit depending the infant comes to age; here it seems, needs no Bill of Revivor.

Where the Complainant hath exhibited his Bill of Revivor, and hath procured thereupon a *Subpœna* to be served; he will be upon this in the same case as the Predecessor was, when the Bill first accrued, unless some good cause to the contrary (as that he is not the Heir, Executor, nor hath the like interest, &c.) can by the Defendants answer be shewed.

Where a man doth wilfully refuse to answer, and stand out all the process of contempt, the Court will take the matter of the Bill *pro confesso* and decree it, *Tothill 69*.

If the answer be good to common intent, the Plaintiff must reply and prove the matter if he can, and not insist upon the insufficiency of the answer.

No exception can be taken to answer after a Replication put in, for it is then admitted to be good, but before Replication it may be excepted against.

But where it is excepted against, the causes must be shewn in writing, and delivered in to the Plaintiffs Attorney or Counsell the same Term the answer comes in, or within eight dayes after; and if he amend it in eight dayes, he is to pay no costs.

Where an answer is excepted against to be insufficient, it is usually referred to a Master, to consider of the exceptions, and he to certify the Court whether it be insufficient.

If the Master certifie it to be insufficient, then the Plaintiff may take out process for costs, and the Defendants answer is not to be received, till he hath paid the costs.

The first answer being returned insufficient, the Defendant must pay forty shillings single costs.

If it be an answer that came in by commission, and be insufficient, he must pay fifty shillings.

The second answer insufficient pays three pounds.

The third five pounds costs, and you may have a *Subpoena* both for your costs, and to make a better answer.

But in these cases of exceptions, the insufficiencies appearing in the same exceptions, are the point to be insisted on, and no new exceptions may be moved. Where the Master upon reference to him finds the answer to be sufficient, and accordingly certifies it, there the Plaintiff must pay forty shill. costs.

If the exceptions to an answer be put in after the Term, there shall be time given to answer them untill the fourth day of the next Term, unless the Court hasten it.

If the answer comes in by commission, and be not good, no new commission will be admitted but upon Oath of the inability of the person, and his payment of fifty shillings costs as before.

Where a cause goes to hearing upon Bill and Answer, the same must be admitted to be true in all points, and no other evidence is to be admitted, but what is matter of Record, to which the answer doth refer, and which is proveable by record it self, *Caries Reports* 78. 30.

Concerning Demurrres, and Pleas, take these Rules following.

First a Demurrer is always where there is matter defective contained in the Bill, or where there is forrein matter.

The Plea of forrein matter may be of two sorts; Either where it is to the Jurisdiction of the Court, or to the disability of the person, as where the Plaintiff is outlawed or excommunicated, or where there is in this or any other Court, a Bill or Suit depending for this very cause.

Or it may be that the cause hath been formerly dismissed in this Court, or the like.

Or if the matter of it appear upon Record, it may be put in without Oath, o herwise not.

In case it be a Demurrer, it must expresse the cause of the demurrer, yet other causes may be insisted on at the time of the determination thereof by the Court.

If the demurrer be over-ruled, the Defendant shall pay five marks costs, where it is allowed, the Defendant shall have no costs.

If one plead a plea that is insufficient, and so over-ruled to be, as where it is an Utlawry pleaded, and it prove not a good plea, he must pay five marks costs.

An Utlawry is not to be pleaded, unless you plead the Record, *sub pede sigilli*.

A plea of Utlawry, if it be in a Suit for the same thing for which a man sueth to be relieved in Chancery, is not to be allowed; but otherwise it is allowed, and will be in force to hinder all the Plaintiffs proceedings, till it be reversed.

But when it is reversed, the Plaintiff upon payment of twenty shillings costs, may upon a new *Subpoena* served, put the Defendant to answer the same Bill.

Where the Plaintiff conceives the plea for matter or manner nought, he may put it to the judgement of the Court.

Where a man pleads for a former Suit, he need not set it down with the Register, but it shall be referred to a Master to certifie (which must be done within a month upon the Plaintiffs procurement) and if the Master doth certifie against the Plaintiff, he must pay five shillings costs: if there be no report within a month of filing the plea, the Bill will be dismissed of course, with seven Nobles costs.

If the demurrer to any Bill be put in upon any slip or mistake in the Bill, the Plaintiff of course laying down to the Attorney twenty shillings costs, may amend his Bill within eight dayes after the Demurrer put in, but not after that time.

If the Demurrer be admitted by the Plaintiff to be good within eight dayes after the filing of it, and he doth pay the Defendant his Attorney, or Clerk in the Court forty shillings costs, then the Defendant shall not need to attend his Demurrer, but the Bill shall stand dismissed of course without motion, unless both sides agree to the amendment of the same, but

such dismissal is to be no bar to a new Bill to be exhibited by the Plaintiff.

Where the Plaintiff finds sufficient cause for an order in the answer, he may go to hearing thereupon without further proof, (of which he should be well advised) in which case he must procure his Attorney to present the same in court, to be set down to be heard upon bill and answer: But in case the Court shall not find grounds to make a decree or final order, the bill shall be dismissed with costs, or the Plaintiff admitted to reply, if he desire it, first paying down five pound costs, within four dayes after such hearing, then the dismissal to stand, and the conclusion of the order upon hearing is to be penned by the Register accordingly, and then such dismissal shall be a good Plea in bar of any new bill for the same matter.

Where a Plaintiff proceeds so far as to proof, and upon the hearing it clearly appears the Plaintiff might have had full relief upon bill and answer, albeit he be relieved in the cause, yet he shall pay costs. See more fully of these things in the collection of Orders, 16. 18. *Carries Reports* 39. 87.

Replication, Rejoinder, and Sur-rejoinder comes next to be handled.

The Replication is the speech of the Plaintiff, in way of reply to the Defendants answer.

The Rejoinder is the Defendants answer to the Plaintiffs Replication.

The Sur-rejoinder is a second defence to the Plaintiffs action, opposite to the Defendants Rejoinder.

First, the Replication must be short relating to the substance of the bill, and it must avoyd superfluous and criminous matter.

Secondly, the Replication must affirm and pursue the bill, and confess, and avoid, traverse, or deny the answer.

Thirdly, the Rejoinder must pursue and confirm the answer, and must sufficiently confess or avoid, or traverse every material part of the Replication.

Fourthly, no new matter must be put into the Replication, and so much matter only is necessary to be here, as will avoid the matter of the Answer.

Fifthly,

Fifthly, if upon the answer there be so much confessed, that the Plaintiff need not to draw into Pleading, and prove all the points, he must see to it, and reply and go to proof, only in those particulars in question, and necessary to be proved.

Sixthly, when the Defendant doth demurr, or disclaim to any Bill exhibited against him, the Plaintiff cannot reply. And if the Defendant in those cases be served with a *Subpœna ad rejunderum*, having before made no other answer, but a Demurrer or Disclaimer, he shall have costs for his unjust vexation.

Where the case is such, that the parties cannot come to issue, by reason of some new matter disclosed in the Defendants Rejoinder, that requires to be answered unto, the Plaintiff may sur-rejoyn to the Rejoinder, and the Defendant likewise to the Sur-rejoinder, if there be cause.

As for the time for the Replication to be put in after the Answer, you are to observe, that the Plaintiff hath time for all this Term, and all the next Term, and untill the beginning of the second Term following, to put in his Replication.

The next Term after the Answer is put in, the Defendant may give the Plaintiff rule to reply: and if such rule be given, and the Plaintiff reply not, costs will be given against him.

And where he gives no rule, and the Plaintiff doth not reply the second Term after the Term the Answer is put in, the Bill will be dismissed with costs of course.

But in case the Plaintiff doth reply, and that the Replication be in Court, the Defendant can have no costs.

In case where the Complainant hath replied, the Defendant may if he will rejoin *Gratis* to the Replication, and force the Complainant to joyn in Commission.

Where the Plaintiff intends to goe to Commission, he must serve the Defendant with a *Subpœna ad rejunderum*, before he can have Commission to examine witnesses, and upon return of the *Subpœna ad rejunderum*, an Oath made of the serving of it, the Plaintiff may by entering rules, force the Defendant to rejoin and joyn in Commission, or to go on to the examining of witnesses without him; for having given him seven dayes to re-

joyn, if within the time he refuse to do it, he cannot do it after.

In such case where the Defendant is served with a *Subpæna ad rejuvendum*, and does not upon the Plaintiffs Clerks demand to the Defendants Clerk, deliver Commissioners names by the end of the Term, wherein this *Subpæna* is returnable, there the Plaintiff may without motion or petition, give names, and take the commissions, *ex parte*. See *Garies Reports*, 111. and collection of orders in Chancery.

The manner of Joyning in Commission, and executing of it.

IN the joyning of this Commission to examine witnesses, the Complainant must first name one Commissioner, unto whom the Defendant may give general exceptions.

The Defendant is to name the second.

The Complainant the third, and

The Defendant the fourth.

The Plaintiff is likewise to have, first the taking out, and carriage of the Commission, as oft as any is sued out, and he or his Commissioners must give either in person, or by a note left in writing, at the place of the usual abode of the other party, fourteen dayes notice to him, of the time and place of executing the Commission, and if there be default then made by the Plaintiff or his Commissioners, in the Execution thereof, he must pay the Defendant such costs as he upon his oath shall make appear he was put to in the attending of the Commission, and the Plaintiff must renew the Commission at his own charge, and the Defendant shall have the carriage of it. And so on the other side shall the Plaintiff have, if the Defendant have the carriage of the Commission, and it be lost by the default of his side.

But where it becomes void by any Error of the Clerk in making it, the costs shall be born by him, and that side for whom it was taken out.

Where the Defendant hath the carriage of the Commission, he must give notice to the Plaintiff, as before directed; and if such notice be not given, either all the examinations will be quashed, or otherwise the Court will grant to the other side a commission *ex parte*.

Where

Where there hath been Publication, there no Commission can be granted or renewed for examining witnesses without special order.

Where a Commission hath been to examine witnesses, without reference and certificate upon it, it cannot be discharged upon a bare petition.

Where a Commission is taken out by consent, and the one side as the speeding of the Commission do put in no interrogatories, nor examine any witnesses (unless upon a Motion, and by order of the Court) he shall never after be admitted to have a new Commission.

Where the Defendant had witnesses to examine, and they being served did not appear, but make default, here a new Commission will be granted to the Defendants. *Caries Reports* 91; 43; *Toshil* 111. Collection of the Chancery orders.

Touching the choice of commissioners, and Examiners, and the exceptions against them.

First, they must be men indifferent.

The exceptions usually taken against them, are, that he who is named Commissioner is of kindred, or allied to the party of whom he is named, and so may very well be deemed to side with that party.

Or that he is Master to the party for whom he is named, or that he is Landlord to the Party, or that he is of his Counsel, or Attorney for him, or one to whom he is indebted, or one that hath a suit with the adverse party.

The Commission being to be sat upon at the time and place appointed, the Commissioners must call the witnesses before them, where if they appear not, an Attachment issues against them, unless it be in such case where the witnesses are impotent, and then a Commission shall be awarded, to examine them where they be, but usually they will have costs before they answer.

When the witnesses appear, to be examined, the Commissioners and Examiners must examine themselves, and not leave so weighty a business to the trust of their Clerks, or others to do it.

They are to hold the witnesses to the points insisted on.

They shall examine them but to one interrogatory at a time,

time, and see that answered first, and at one time,

They are to take what comes from them in answer to what they are examined, and not upon their sight of all the Interrogatories, to let them set it down themselves.

After they have been examined, upon better thought they may force them to attend their examination. They ought not either to ask them idle questions besides the matters of the Interrogatories, nor set down impertinent Answers.

They are to set down truly their saying in Parchment, and that done, they are to set their hands to every Schedule-examination, and send them up into the Court as they are taken, with a certificate.

Where the Commissioners meet with any obstruction in the work, they must certify that also.

After the Commission is duly executed, and that it be returned up, one of them must deliver it in the Court, or they must send it by one that must make Oath, that he received it from one of their hands, and that it was not altered to his knowledge.

If any one of the Commissioners commit any misdemeanor about examination, the party grieved, upon Oath of it, may have the attachment against him, and cannot have a Commission to examine it upon the certificate of the other Commissioners.

Where there is a disagreement of the Commissioners, or where there is any other special cause that obstructs the Commission, they may have an examination set down on purpose to do it. See *Caries Reports* 30, 31, 40, 80, 81. *Tothill* 189.

The Interrogatories to examine Witnesses must be succise and apt.

When witnesses are examined in Court upon a Schedule of Interrogatories, you cannot examine the same witnesses upon putting in new Interrogatories.

Witnesses may be examined as well by Examiners in Court (in case they live in or near the Town) as by Commissioners in the Countrey.

Either party, as well Plaintiff as Defendant, after answer put in, untill publication be past, may examine what witnesses they please in Court, before one of the examiners; but before answer, and after publication no examination

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nation will be allowed, but by special Order, some special cause being shewed:

Notice must be given both of the names and dwelling place of the person examined, in all cases of Examination.

After the Order of Publication, and that delivered to the Examiner, no Witness may be examined in Court, though he were sworn before; *Caries Reports*, 27, 58, 93, *Toibill* 189, 190, 191.

Touching Deposition of Witnesses.

NO Abstract, or Copy of the Deposition of the Witnesses, is to be delivered till Publication be past.

No Deposition of Witnesses may be suppressed upon a bare Petition only, without Reference and Certificate upon

Where there are several Cases which are merely Cross-claims between the same Parties, and touching the same matter, there the Deposition of Witnesses (in the several Causes) may be used at the hearing of both Causes (being heard together) without any Motion.

Where Depositions are regularly taken, they may not be suppressed by Motion; But the Depositions of Witnesses appearing to this Court to be gotten by practice, may by Order of the Court be suppressed. Deposition of Witnesses taken in this Court, may by Order of the Court be made use of in any other Court, *Caries Reports* 355, 36. *Collection of Chancery Orders*.

He that will examine Witnesses (*in perpetuum rei memoriam*) to preserve a Testimony, he must first exhibit his Bill, and shew his Title to the thing, and that the Witnesses to prove it are old, and not like to live long, whereby he is in danger to lose it, and then pray a Commission to some Gentleman of Credit in the Countrey to examine them, and a *Subpoena* to the parties interested, to shew cause (if they can) to the contrary.

If the party interested, being duly served within 14 dayes, shew cause, the Plaintiff must desist; if he cannot, he may go on alone, if the other will not joyn with him, as he may if he will; and then 14 dayes warning is to be given for Execution.

The

The Court in this case will appoint Commissioners, and give Articles to examine upon, or they may be examined in the Court by an Examiner.

None but aged and impotent persons may be examined upon this Commission.

Where the Defendant takes Exceptions to the Proceeding in speeding the Commission; as whether it did appear or not, and whether Oath were made before them, of notice given to him of the time and place of Execution thereof, in such case the Commissioners must certify up with the Commission the Exceptions the Defendant so took.

This Testimony taken upon this Commission, is not to be published whilst the Witnesses live; but in some cases, as either by consent of the parties, or upon Oath made, that either the Plaintiff hath some Tryal at Law, wherein he shall need it; and that the Witnesses are not able to come to the place, or otherwise by Order of Court; and then the Commission is to be opened by a Master, and to be considered of; and afterwards it may, if the party will, be exemplified, and may by Order of this Court be given in Evidence in any other Court.

These Depositions thus taken, shall not be made use of to be given in Evidence against any other, but the Defendant who was warned to defend it, his Heirs or Assignes, or some other claiming by or under him, by some interest, which accrued unto him, after the Bill preferred, *Tohil 189, 190, 191, 192.*

Where both Plaintiff and Defendant have examined what Witnesses they please, and are ready to go to Hearing, then either of them must first give the other a Rule for Publication; If it be the Plaintiff that gives the Rule, then thus, (Day is given to the Defendant of Publication upon the Commission joyned) and if the Defendant give the Rule then on the contrary thus, (Day is given to the Plaintiff for Publication upon the Commission joyned.)

The Day so given is one Week, which being expired, and no cause shewn to the contrary, then Publication is granted.

After Publication so granted, neither party can examine Witnesses, except it be by special Order of the Court; which is not granted without an Oath made, that the party which requireth the same, nor any of them hath seen, or been made

privy

privy to any Examinations of any the witnesses formerly examined in this Court by either of the Parties, and some good cause be shewn, either by Oath or Certificate of Commissioners, why the party could not get his said Witnesses examined within the time limited for their Examination: in which case sometimes the Court gives Order to examine witnesses by a time prefixed, with this Proviso, that the party shall not in the mean time see the said former Examination.

Touching setting down the cause for Hearing.

AFTER Publication had, the Plaintiff, or in his neglect, the Defendant may procure a Day of Hearing of course to be let down by his Clerk at the end of the Term, when the Lord Chancellor do &c. set down Days for hearing the next Term.

The days must be set down according to their priority of Publication.

No cause must be presented for Hearing, the same Term that Publication doth pass.

All Processes to hear Judgments must be returnable 6 or 7 days before the day of Hearing, except it be in the beginning of the Term, when the time will not bear it; and the Writ must have on the back of it the very day of Hearing.

If the Plaintiff appear not, the Defendant is to be dismissed with costs, *Carries Reports 45. Collection of Orders in Chancery.*

Touching Decrees, take these ensuing Rules.

EVERY Decree must be drawn up as short as with convenience it may, and not recite the Pleadings largely, but the sum of it briefly.

If the Decree be made before the Master of the Rolls, or before any Judges, it being drawn, must be first signed by them, and after by the Lord Chancellor, and then it must be inrolled.

The Decree must be signed and inrolled before the first day after the next *Michaelmas* or *Easter* Term, after the making of it.

Where the Decree concerns Lands or Leases, it must be entered into the Registers Docquet-Book, within 6 months after the

the making of it; otherwise it shall not prejudice the Purchasers of the Land.

No Decree shall be binding to any, but those who are served with Process, *Ad audiendum judicium*, or that did appear *Gratis*.

The Purchaser that comes in by Conveyance, *Bona fide*, from the Defendant before the Bill exhibited, and that is no Party by Bill or Order, shall not be bound up by any Decree.

But where a man becomes a Purchaser (*pendente lite*) and without any colour of privity, or allowance by the Court, there it shall regularly bind him; yet in such case, if there have been any intermission of the Suit, or the Court be acquainted with the Conveyance, the Court is to give Order in it.

No Decree made by this Court can be crossed, altered, or explained upon a bare Petition only; and yet hereby it may for some special Reasons, be staid for a while, till it can be moved in Court.

A Decree of this Court once inrolled, cannot be reversed or altered, but by a Bill of Review; unless it be in case of mistaking, where the Case is demonstrative, and then it may be done by Order.

A Decree will bind the persons; for where any do refuse to obey it, this Court will imprison him untill he do conform.

A Decree of this Court doth bind the Right and Title to Lands and Goods; for this Court, by their Order of Sequestration and Injunction, doth dispose of the Possession thereof for ever to him, the Court judgeth to have right thereunto in Conscience.

Where a Decree is to be made upon a pretence of Equity against the Judgement of another Court; this Judgement is first read, and then the Decree is not to vacuate the Judgement, but to order the unreasonable party.

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The course of the Court is to enforce Obedience to their Decrees, and to punish the breach of them.

First, They are to serve the party with the Decree it self, under the Seal of the Court, and if he yields not obedience unto, but stands obstinate, they then proceed to take out of the Court all the Processes of Contempt against him, one after another; and the party being taken, is to be straitly imprisoned, and not to be set at liberty till he yield obedience to it, (that is to say) That he perform that part of the Decree, which is presently to be done, and give Security to perform that part which is to be done for the future.

Also, the Lord Chancellor for his Contempt may fine him what he please, and afterwards estreat.

Where the Decree is for Land, and the party remain obstinate and wilfull after his Imprisonment, the Court doth use to grant an Injunction for the Possession; and this being disobeyed after it is served, an Oath made thereof, the Court doth in that case grant a Commission to some Justices, and if need be, a Writ of Assistance to the Sheriff, to put him in possession. See *Carrs Reports* 23, 34, 36, 37. *Tothil* 56, 57. *Collection of Orders in Chancery*.

Where this Injunction is granted for possession of the land, and the party sits out all the Process of Contempt, and cannot be found by the Serjeant at Arms, or make a Rescue, a Sequestration shall be granted of the Land, *Tothil* 107.

This Sequestration is granted sometimes as well of the Goods, as of the Profits of a Man's Land, and that for his wilfulness in standing out in Contempt, and disobedience to the Court; as well where it is for discharge and payment of Debts and Duties, as where the Decree is for the payment of a sum of money, &c. *Tothil*. 175, 176.

Concerning Contempts.

IN case of Contempts upon force, or ill words used upon serving of Process, or other words of scandal to the Court, if they be proved by *Affidavit*, the party forthwith upon Motion will be committed, if the words spoken deserve it.

For

For other contempts against the Orders and Decrees of the Court, take as follows.

First, an Attachment goes forth upon *Affidavit* made of the Contempt.

Then the party being taken is to be examined upon Interrogatories, which is usually upon motion referred to one of the Masters in the *Chancery*.

The Contemptor coming in *Gratis*, or upon Process, should give notice to the Clerk of the other side of his Appearance; and if then there be not Interrogatories put in within eight dayes, or being examined, if no Reference be of the Examination, or Commission taken out by the other side, nor witnesses examined to prove the Contempt in a Month; the contemptor shall be discharged, and shall recover costs, taxed by a Master without any Motion.

If after he hath appeared upon the Contempt, he depart, not examined, he must stand committed, till he be examined and cleared; and if it be found, he must clear it, and pay costs ere he be discharged.

Such as stand committed for Contempts upon Attachments, or Commissions of Rebellion, must enter into Bond to attend from day to day, not to depart without leave of the Court, *Caries Reports* 9. 44, 70, 71, 82. *Collection of Chancery Orders*.

Imprisonment upon Contempt for matters past, may be discharged of Grace, after sufficient Imprisonment, or it may be otherwise dispensed withall in such case,

But where the Imprisonment is for non-performance of any Order of the Court in force, then the person so in contempt ought not to be discharged, except the first obey, & only the Court may dispeace with the Contempt for a time.

Concerning Bills of Review.

A Bill of Review shall not be admitted, except the *Decree* be first obeyed and performed.

No Bill of Review shall be put in, except the party that prefers it enter into a Recognizance with Sureties, for the satisfying of Costs and Damgages for the delay, if it be found against him.

Where a Cause is dismissed upon full Hearing, and the Dismission

Dismission signed and inrolled, it cannot be retained again but by a Bill of Review, and that in some special case.

No Bill of Review is grantable but upon Errour in Law, appearing in the Body of the Decree it self, without Averment or further Examination of any matter of Fact, which might have been had at the time of the Decree, unless he shew some new matter, which hath risen in time after the Decree, whereof the Plaintiff could not have advantage of before: and then upon oath made, that there is a discovery of such new matter, this Bill (by leave of the Court) may be exhibited.

But he that so obtaineth this Bill, must first give Security by Recognizance to a Master, as is before directed.

Where the Decree is to yield the possession of Land, deliver Writings or to pay Money, he must first perform that before a Bill of Review: But if the Decree be to extinguish a Right, convey Land, release a Debt, acknowledge Satisfaction, or to cancel Records or Evidences, or the like, it may be staid by the Order of the Court, till the Bill of Revivor be determined.

No Witnesses which either were, or might have been examined upon the former Bill, shall upon this Bill of Revivor be examined to any matters: *Collection of Orders in Chancery, Tohil 273.*

Having now gone through the general Proceedings of Chancery, upon Bill and answer, there are some things, which (in some Cases) are essentiall to those Proceeds, which take as follow: And first concerning Injunctions.

THis is looked upon, according to the general acceptation, as that which makes stay of Proceedings at Common Law; although in many Cases it is likewise to the end to gain the possession of Land, in some Cases it proceeds, and in some Cases it is subsequent to the Decree, and sometimes by Writing, and other times by word of mouth, as when the Party who is to be inhibited, is present in Court.

Where it stays Proceedings at Law, in some Cases it gives leave to go to Tryal and Judgment, but stays Execution

Where the matter of Law is tryed, it barrs them from Judgement as the Case may be.

Or Where there is a Judgement, and that executed, it will stay the money in the Sheriffs hands, after the Party is arrested at Law for the money.

This Injunction is commonly procured, either upon some Writing, or matter of Record plainly appearing; or upon a very old Debt that hath slept long, Creditor and Debtor being both dead; or in such Cases where the Defendant doth not appear, but sits an Attachment; or if he appears, either answers not the Bill, or confesses so much thereof as is sufficient.

Where either the Defendant is beyond the Seas, or being in the Kingdom, doth absent himself, so that he cannot be served; or where upon any pretence he hath gotten time to answer; the Court doth usually in those Cases grant an Injunction to stay Suit, till the Defendant doth appear.

Where there is a Commission granted to take an Answer in the Countrey, an Injunction will be granted to stay the Defendants Suit at Law, (if any be) till the Answer come in; and of this the Defendant must take notice without any serving of it.

Where there is a Verdict at Common Law in an Action of Debt, and a Bill be afterwards exhibited for relief, here the money must be deposited in Court, before the Court will grant an Injunction, unless in some Cases where some special matter in Equity appears by the Defendants Answer, or in some former Decree.

Where a person privileged in this Court is sued elsewhere, he may stay that Suit by this Injunction.

Where Timber is unjustly felled; ancient Meadow ground plowed up in 20 years before, or for the maintenance of Inclosures kept in for 20 years before, there it is grantable according to the Case.

Where an Injunction is granted to quit a Possession, it is granted of Houses and Land only, and not of Rent or such like thing; and it is not to be granted before the hearing of the Cause, unless upon Oath, that the Plaintiff was in possession at the time of the Bill put in, and then only of that Possession he had then, and three years before, and at the time of the Motion, and not to be extended to the possession of those from whom he claims: And this shall not hinder

the Defendants Suit in Law, making of a Lease, taking of a Distress, &c. And this injunction where the Plaintiff delays his Suit to be dissolved again.

Where it is to stay or remove a Suit by *Certiorari*, Bond must first be given, that the Bill hath matter sufficient in it to bear it, & shall be proved true within 14 days after he hath the Writ; and this if he do not in this time, after a Certificate of his neglect from the Examiners, it shall be dismissed with costs, and a *Procedendo* granted.

Where the Injunction is to be obtained by Motion for matter in the Answer, there the Council must put the case in writing to the Court.

Where it is granted upon the merit of the cause, or upon special cause in Equity, it is to stand till the hearing, unless the Plaintiff delay his Suit.

This Injunction must be served either on the party himself, his Councillor, Attorney or Solicitor, &c. as the case requires, and the manner of the serving it, is much like the serving of a *Subpoena*.

A bare Petition only will not dissolve this Injunction, nor if it be had by Motion, is it to be dissolved without Motion of the adverse party.

Where an Injunction is granted till the Answer be put in, and no Order be made to continue it, within 14 days after the Answer is come in; in this case it shall be dissolved upon the Registers Certificate thereof onely; and if no Motion be made that Term, or at the next general Seal after the Term; to continue it for insufficiency of, or matter confessed in the Answer, it is dissolved of course; so where it is to stay a Suit at Common-Law, and the Plaintiff doth not proceed for three years together.

Where the Injunction is disobeyed (if you would force obedience thereunto) upon Oath made thereof, all the Processes of Contempt are to go out against him one after another, and being taken, he is to be imprisoned, till he do yield obedience to it, or give Security to do it; nor is he to be heard in the principal Case, till he yield obedience in every thing in the Injunction, *Tottil 107. Caries Reports 112, 113.*

Touching Dismission, take these things following.

THis is prayed by Motion, and had upon Plea to the Bill or hearing of the Cause, and not after Examination of Witnesses before Hearing, but upon a discontinuance of prosecution, by Motion and Order of the Court.

Where the Plaintiff discontinues his prosecution after all the Defendants have answered, above the space of three Terms, the Cause is to be dismissed of course; but after a Replication put in, it cannot be dismissed without an Order upon Motion.

Where a Cause is dismissed, upon a full Hearing recorded, and certified by the Lord Chancellor, it cannot be again retained, or a new Bill admitted, but where there is new matter,

Where the Bill is newly dismissed of course, or by Order, no Motion will be heard to retain it, till the costs assessed upon the dismissal be paid, and certified from the Attorney on the other side that it is done.

No Dismission nor Retainer upon a Dismission will be granted upon a bare Petition only.

In cases of Dismission not upon a full Hearing, to a new Bill this may be pleaded.

But for the causes of Dismission, the Court will retain and dismiss as it doth see cause. See Collection of Chancery Orders, *Caris Reports* 34.43.74.76.110.

Touching Reference, and Reports, take as followeth.

WHere there is a demurrer to the Jurisdiction of the Court, there no Reference may be had to a Master upon it, but it must be heard before the Lord Chancellor himself.

After examination of Witnesses is past, there can be no Reference had to a Master to end and determine, unless it be in case of near kin, poverty, or consent of parties.

A Reference of estate of the Case is sparingly granted, unless where there is consent of the Parties.

The Examination of Court-Rolls is to be by Reference, but there it must be two Masters at the least.

No Reference shall be made of the insufficiency of an Answer, without allegation of special Causes. See Collection of Chancery Orders.

The Reports of the Master upon the Reference must not exceed the Warrant of Reference; which is the Order of Court by which it is referred to him.

After the Master hath seen the Order, he usually grants out a warrant, which is shewen to the other side, whereby he gives notice of the time of his hearing the Cause, where the other side, with their Counsellors, or Solicitors, may as they see cause attend.

The Report it self is usually brief, and with some Opinion, if the Case be not very doubtful; and if so, then it must set forth the special Case.

No Order can be had to confirm the report, till it be first filed with the Register, under the Masters hand, and a day given on the other side, for 7 days at the least, to speak to it in Court; and yet where it is not to ground a Decree, and it be positive, it is to stand, and process may be taken out for the performance thereof, unless the adverse party upon notice thereof, do within 8 days after (if it be in the Term-time) or if within the general Seal; Motions; or if after within 4 days of the beginning of the next Term, get it controlled.

Where there is an Appeal to the Court from the Report of a Master, the party that doth so appear, must depose 40 s. with the Register, and a day will be set for the judgment of the Court, if the Court do adjudge it against the Appellor, the other shall have the 40 s. and what more the Court shall judge fit; if otherwise the money shall be restored: See Collections of Chancery Orders.

The matters briefly under Reference are either insufficient Answers, or matters of Account.

Where the Master upon a Reference to him reports the Answer to be insufficient, the Complainant may take out two Subpœnas against the Defendant, the one for 20 s. costs, and the other to make a better answer.

Touching Orders, and the Register that draws them.

THE Register being sworn to sit in Court, is to take notice of all Orders the Court doth make, and take short Notes in their Book, by which to draw up some more full Remembrances of that which passed in Court.

Where any other shall be made, and the Court not informed of the last material Order formerly made, no benefit shall be taken by such Order, as being surreptitiously procured; and to that end the Register doth mention the last former Order in the present Order.

An Order made out of the general Rule, must set down the Special Reasons of it.

No Order shall be explained by Petition, but by publick Motion, both parties being heard.

No Order but final Orders and Decrees, may be received to be entred after 8 days after the pronouncing of it, that day being excluded.

The Register is to keep Copyes of the Orders he doth deliver, and his hand is to be put to the Order before it be entred.

The Register after a Hearing, and Reference to a Treaty, is to set down in the Order of Reference, what was the Opinion of the Court, unless the Court do direct it to be drawn otherwise.

All Orders drawn up by the Register, are to be entred under the Registers Hand in due time.

The Register is within ten days after the end of every Term to certify the Lord Chancellor, what Reference depends in the Hands of any Master, and how long they have depended, that so if any of them have depended over-long, the Court may require an account thereof from the Master, and quicken him to a speedy dispatch.

Touching Suits in Forma Pauperis.

THE Council and Attorney assigned for *Paupers* may not refuse, but must attend their business, unless they shew Cause to the Court why they cannot so do.

They

They must always have their Order of admission with them, and first move that, before any other Motion; and it hinders not, but that they may, if they have any other Motion, make it afterwards.

Where the Register finds that it is not a *Pauper*, he shall not draw up any Order upon the second Motion, but the *Pauper* shall lose the fruit of it.

No Councellor, Attorney, or Officer of the Court appointed to be for a *Pauper* by the Court, is to take any thing of, or contract for any thing with him, and the *Pauper* that can be proved so to have given or contracted, is to be dispaupered for ever.

If a *Pauper* sell, or contract for his Suit, or any part of it, his Bill shall be dismissed, and never after retained.

No Process of Contempt shall go out for a *Pauper*, untill it be signed by the Six Clerk who deals for him, and he must see there the cause for it.

The course to obtain the Admission is by way of Petition, either to the Lord Chancellor or to the Master of the Rolls, who underwrite it, the party having made Oath that he is not worth $\text{\pounds} 1$. and assigns him Council and Attorney.

His Admission must be shewn the several Offices, where he hath occasion to pass.

Touching Petitions, for the avoiding the multitude of idle ones, drawn by persons altogether ignorant of the practice and course of the Court, or true state of the Petitioners business; it is directed, that Petitions before they be presented to the Lord Chancellor, or Master of the Rolls, be shewed to the Six Clerk, who is the Petitioners Attorney in Court, or to his Deputy, and by him approved and subscribed; and for this no Fee is to be taken: but this is not to be understood of Petitions advised, and signed by Council: Nor of Petitions containing any matter of complaint against the Attorney, or his Under-Clerk.

Touching Affidavits.

Affidavits are most generally made before Masters of the Chancery, but where its for the serving of a *Subpoena*, they are sometimes taken and certified by others.

An *Affidavit* may not be taken against an *Affidavit*, for if it be, the latter is not to be used.

An *Affidavit* ought not to be taken, tending to the proof or disproof of the matter in question : nor may any such matter be admitted, to be colourably inserted into any *Oath* made of the serving of *Process*. See more to this purpose, *Garies Reports* 63, 81, 82, 84, 85, 88, 98, 99, 103.

The way of Proceeding against a Priviledged Person.

A Declaration against a priviledged man for Debt, or any thing whereof the Court holdeth *Plea*, is to be delivered to one of the Six Clerks, whom the Plaintiff maketh his Attorney, and he thereupon giveth a day (as it is commonly termed) which is a week, (*viz.* the whole next Return) to the Defendant to answer ; which day is entred in the Six Clerks Costs-Book in this manner, (*Roberts against Johnson*) a day is given them from the day of St. Michael in one month in a *Plea* of Priviledge.

Day being thus given, the Declaration (under the Attorneys hand) is sent over to the Petty-Bag, by one of the said Attorneys Clerks; which Declaration is briefly entred by one of the Clerks there, and likewise the day that is given to the Defendant to answer in a Roll there, which is called *Rosulow remembranc. Parva Baga*. At which day, by the course of the Common-Law, if the Defendant plead not, he is fore-judged the Court; but the course of the *Chancery* hath been of late to allow the Defendant a day of *Imparlancc*, that is, day till the next return after the return given him to answer, which is in this manner.

The Defendant retaineth one or other of the Six Clerks, who imparleth from him, which is done in the Six Clerks Costs-Book, in this manner (*Roberts against Johnson*) *Imparlancc* untill the morrow of *All-Souls*, at which day it is sent over to the Petty-bag, to be entred into the aforesaid Roll next under the said Declaration.

The said day of *Imparlancc* being past, another day, *viz.* commonly 5 days in a week (which is commonly called a *peremptory day*) is given by the Plaintiffs Attorney, and entred in the Petty-bag as aforesaid, to the Defendant to plead, or

the Judgement is to be entred against the Defendant. If the Defendant plead, his Plea is delivered by his Attorney to his *Plaintiffs Attorney*, and then if the *Plaintiff* will proceed to a Tryal, he is to joyn up the Issue (if he may, for in some Cases he cannot) or else the *Plaintiff* is to reply, and to give the *Defendant* a day, *viz.* a whole Term to joyn up Issue, which is given and entred as the day to answer: and if the *Defendant* by that day joyns not up the issue, Judgement is entred by *Nilil dicit*; and it is to be noted, that after a peremptory day given, the *Defendant* cannot pray *Oyer* of the Bond and Condition, or such like, as of late is used for a meer delay: But if the Issue be joyned up, either by the *Plaintiff* or *Defendant*, then is the Record made up, and the same with a *Venire facias* is sent into the *Kings-Bench* to be tryed, as an Action there at Issue, and upon Judgement there, Execution is thereupon there awarded.

But if the *Defendant* refuse or neglect to imparle at the day given him to answer, or to plead, for he may plead at that day if he will, then is Judgement entred against him, and Execution awarded.

Upon Judgement either by default, or *Nilil dicit*, some of these Writs of Execution are awarded; if for Debt, the *Plaintiff* may have an *Elegit* by *Westmin. 2. Chap. 10.* or else *Levati facias*, or *Scire facias*: and if the *Plaintiff* cannot levy his Debt and Damages, then he shall have a *Capias ad satisfaciendum*, either for all, or so much as resteth unsatisfied.

The Judgement being satisfied, the *Plaintiff* by himself or his *Attorney* (if the *Defendant* do desire it) doth acknowledge satisfaction upon the Judgement in the Petty-bag Office.

It is to be noted, that whatsoever day is given by any of the Six Clerks, and by them entred into their Book, worketh nothing, if the same be not entred into the Petty-bag.

The course used, where the Priviledged Person sues.

THE *Defendant* being arrested by an Attachment of Priviledge, at the Suit of a priviledged man, must retain one of the Six Clerks to be his *Attorney*, and must put in Bail to the *Plaintiffs* Action, according to the course of the Court, which is, to appear from day to day, untill the Plea be determined, to satisfy the *Plaintiff* all such sums of money, as the *Plaintiff*

siff shall recover against him by reason of this *Suit* : Then the priviledged man putteth in his Declaration, and the Proceedings thereupon are the same as before, against the priviledged man.

By the course of the Court, the *Defendant* is to put in four Subsidy men, or sufficient Sureties, (be the *Action* never so small), as appears between *Archibald* and *Bural*, 23 *El.* where in the *Defendant* is bound in four hundred pounds, the sum of the *Action*, and every Surety in a hundred pounds.

If Judgement be given for a priviledged man in this Court, he may (if he will) take out Execution against the *Defendant* as before ; but if he will not, then he may take out a *Scire facias* against the *Defendant*, and his *Manucaptors*, upon the Bail ; whereupon, if Judgement be had upon the *Scire facias* in the *Chancery*, Execution is awarded as in the former *Actions* : But if upon Issue joyned, and sent into the *Kings-Bench*, and upon a Tryal there, Judgment be given, then is Execution there awarded ; and upon satisfaction of the Debt and Damages, the Bill is to be discharged, upon the acknowledgment of satisfaction, as before.

If either the *Plaintiff* or *Defendant*, upon a Declaration of *Privilege*, or *Scire facias*, demur in *Chancery*, the Demurrer being joyned, a day is set down by the Lord Chancellor, for arguing thereof before him ; And if upon the Argument it fall out to be *Respondens ouster*, then Judgment is entred thereupon ; and it is entred against the *Defendant*, then Execution is awarded ; and if against the *Plaintiff*, then it is, that the *Plaintiff* shall take nothing by his Writ, or by the Declaration.

But if it be a *Respondens ultra*, then is the *Defendant* to pay Costs, and a day given for him peremptorily to plead, or Judgment to be entred, *Practice of the Chancery*, 93, 94, 95, 96.

A Table

A Table of Fees due unto the Six Clerks, and other Officers of the Court.

FOR all first, second, or other Copies of all Bills, Answers, and other Pleadings whatsoever; as also of all Certificates and Examinations made or taken, by vertue of any Commission out of this Court, and of the Interrogatories therewith returned; and also of all Declarations or Proceedings by English Bill, or according to the course of the Common-Law, and for Copies of Records, Rolls or Evidences, brought in to be copied, of remaining in the said Court, for every Leaf of Paper containing fifteen lines

l. s. d.
00 00 08

For the Inrolling of all Warrants, whereby any Patents, Commissions, Licenses, Pardons, Leases, or other Grants whatsoever, do pass by and under the Great Seal, after the rate of every skin to passing the Great Seal, 2 s.

For the Inrolling of all Warrants for all Commissioners for the Peace, for Goal-delivery, for a Liberty of Oyer and Terminer, for Pyracies, for the preservation of the Game of Swans, and for Commissions for Inquiry, supd out for the benefit of any private person, for every of the said Commissions, 1 s. 3 d.

For the Inrolling of all Warrants for all Commissions of Appeal, and for the Admiralty for every one of them, 4 d.

For the Inrollment of every Warrant for every ordinary license, or Pardon of Alienation, 3 s. 4 d.

But if it be of more then ordinary length, then according to the length after the rate of 20 s. the Skin, and not above.

For the Inrolling of all Warrants for all Commissions in the nature of Writs, of *Diem clausit extremum*, *Mandamus*, *Idiotia probanda*, *Lunaticis inquirend*, *Misaiat inquirend*, for every of them, 3 s. 4 d.

For the Inrolling of the Warrants, for every Patent or Grant of the custody of any Ward, 3 s. 8 d.

For

For the Inrolling of the Warrant for every Presentation, Donation, or Revocation, to any Rectory, Vicaridge, Dean, Arch-Deaconry, Chancellor-ship, Treasurer-ship, or Dignity to any Metropolitane, Cathedral, or Collegiate Church, or for any Canon-ship, or Prebend, in any of the said Churches, or for the Master-ship in any Hospital, or other Ecclesiastical Living, or for the Grant of any Presentation, or Presentations, *pro unica vel pluribus vicibus* thereunto, 3 s. 4 d.

For the Inrolling of Warrants for every *Mandamus ad faciendum*, 3 s. 4 d.

For the Inrolling of all Warrants, for all Licenses for Wines, for every Life, 3 s. 4 d.

Or such Fee not exceeding that proportion, as by the Commissioners shall be set down, formerly they paid although granted for three Lives, 6 s. 8 d.

For the Inrolling Warrants for every Pardon of Outlawry, 3 s. 4 d.

For Inrolling the Warrants for every Denization, or Commission of Bankrupts, 3 s. 4 d.

For the writing of every Exemplification, as well of Records in the Tower, as of any Records whatsoever, being in their custody, after the rate for every Skin, 1 l. 6 s. 8 d.

Of every Clyent for every Term whilest his Cause dependeth undetermined, by decree or by dismissal, the termly Fee of 3 s. 4 d.

If there were twenty Plaintiffs or more in one Bill, they pay but one Fee for one Term 3 s. 4 d.

But for every three Defendants, accounting the Husband and the Wife but for one person, there is due for their first appearance 3 s. 4 d.

And upon the first appearance, if every Defendant appear severally by himself, he is to pay the Fee of three shillings four pence, but every Term afterwards during the continuance of the Cause, there is only the Fee of three shillings four pence the Term, to be paid for all the Defendants that appeared in any Term or Vacation, in the same Cause.

For a *Subpoena* to answer 2 s. 6 d.

If there be three in the writ, you pay more, 00 6 d.

For the Attachment 2 s. 10 d.

For breaking it up with the Sheriff, 2 s. 0 d.

For return of the Attachment, 0 s. 4 d.

For the proclamation upon the same, 2 s. 10 d.

The Compleat Attorney.

318

For the return of the Proclamation,	4 d.
For the Commission of Rebellion,	18 s. 2 d.
For the Inrollment of every <i>Liberate</i> and <i>Allacate</i> ,	3 s. 4 d.
The Rule which the Plaintiff gives the Defendant to make answer by a certain day, in case where the Defendant appears,	4 d.
For each Rule of Publication, after Examination of witnesses,	4 d.
For entering them with the Register, for each	4 d.
The Defendants appearance,	4 s.
In which is included the Attorneys Fee for the Term,	
For the Oath made that the Answer is true,	1 s.
The like for every Defendant,	1 s.
For the Commission to take the Answer in the Country, by <i>Quidam possitatem</i> ,	7 s. 10 d.
Besides the ingrossing of the Bill, which is included, every	6 d.
For the <i>Subpœna</i> for costs where the Bill is not put in by the Complainant within the time limited,	2 s. 6 d.
For a Bill of costs, and the entry of it,	2 s. 4 d.
A joynnt Commission to examine Witnesses in the Country	7 s. 10 d.
So much the Plaintiff pays the Defendant,	6 s. 8 d.
For the Examination of the first Witnesses here before Examined,	6 d.
For the Copies of the Depositions of any Witnesses returned by Commission,	8 d.
For every sheet,	
For Copies of Depositions taken in the Examiners Office for each sheet,	1 s.
For the drawing of the Order upon Motion, for every side,	3 s.
For the entering of the Order, every side,	1 s.
The Fees of an Injunction in all,	1 l. 2 s. 6 d.
For a <i>Subpœna</i> to rejoin,	2 s. 6 d.
For a <i>Subpœna</i> to hear Judgement,	2 s. 6 d.
For a <i>Subpœna super ordinem</i> to shew cause,	7 s. 2 d.
For a <i>Subpœna ducens tecum</i> ,	2 s. 2 d.
For a <i>Subpœna de executione ordinis</i> ,	1 l. 0 s. 0
For the Rolls to publish Witnesses, for each,	4 d.
For entering them with the Register, for each,	4 d.
For	For

For the Copy of Replication, Rejoinder, Sur-rejoinder, Rebutter, and Sur-rebutter, as for Bill and Answer,

Fees for a Decree for drawing up, as in case of an Order,

For every Writ of Execution upon any Order, 6 s. 8 d.

For drawing and inrolling every Decree and Dismissal respectively, 3 s. 4 d.

For every Writ of Execution, upon any Decree after the rate for every Skin, 11. 6 s. 8 d.

For the writing of every Sheriffs Patent, Writ of Assistance, Writ of Discharge, Commission to take the Sheriffs Oaths, the Warrant of Attorney, and the writing of the two Oaths, and the Attorneys Fee, 11. 2. s. 8 d.

For every *Superfedeas* for the discharge of any Commission, or other Writ made in the Six Clerks Office, 6 s. 8 d.

For every *Superfedeas* of Privilege, 6 s. 8 d.

For every special *Certiorari* or *Procedendo*, *Corpus cum causa*, or *Habeas Corpus*, 6 s. 8 d.

For every Bail upon every Writ of *Corpus cum causa*, of nature of privilege, 2 s. 6 d.

For all manner of *Certioraries*, and *Procedendos* of Court, 11. 2. s. 8 d.

For every Recognizance or Bond made to the Court, 11. 2. s. 8 d.

Rules and Orders for the Common Bench formerly

appointed by the Judges of that Court, and still

in practice, with several Additions and Alterations, as followeth.

Concerning Attorneys and Officers.

That all Officers and Attorneys of the Court, be admitted of some *Justices of Court*, or *Chancery*, in the same Term where in they are admitted Officers or Attorneys, and be in Commons one Week in every Term, and take Chambers there; or in case that cannot be conveniently, yet to take Chambers or Dwellings in some convenient place, and leave notice with the Butler where their Chambers or Habitations are, under pain of being put out of the Roll of Attorneys,

That all Officers and Attorneys of this Court, appear in person in this Court, upon o. before the 14. day of Michael-

The Compleat Attorney.

319

Term, and upon or before the 7 day of every other Term, upon pain of 10 s. for the first default, 20 s. for the second default, and putting out of the Roll for the third default. The appearance to be entred with the Clerk of the Warrants, and the Defaults to be delivered to the Court upon Oath (if required) within three dayes after the time required for appearance.

3. That the Clerks of Assize, their Deputyes or Assistants, do personally appear with their *Posteas* on the first day of *Easter*, and *Michaelmas* Term; and the Deputy Sheriffs, and all other Officers of the Court do personally appear by the *Esf* soyn day of every second Return of every Term; And continue there during the residue of the Term, without some just cause to the contrary allowed by the Court.

4. That for the future, Common Solicitors be not admitted to practice in this Court, unless they are admitted Attorneys of either Bench: provided that it extend not to the making of Evidence at a Trial, nor to private Solicitors, or Servants of Corporations or other persons in the cases of their Masters.

That none be admitted an Attorney of this Court for the time to come, unless he hath practised as a common Solicitor in this Court by the space of five years now last past; or hath served, or shall have served by the space of five years as Clerk to some Judge, Sergeant at Law, practising Counsel or Attorney, Clerk or Officer of one of the Courts at *Westminster*, unless his Master die or give over his practice, and be then upon Examination found of good ability and honesty for such employment; and that sufficient proof (to be put into writing) be made of such service to the Prothonotary upon desire of Admittance, and filed with the Clerk of the Warrants without Fee.

6. That no person practise in anothers name, nor that any Attorney knowingly permit another to practise in his name, upon pain of being put out of the Roll, excepting in Warrants of Attorney for common Recoveries.

7. That Attorneys dismissed by one Court from their practice for misdemeanour, be not (after Certificate) admitted to practise in another Court, it being contrary to the intent of the Law.

8. That

8. That no Under-Sheriff or Bayliff of Sheriffs or Liberties be admitted during such their Employment to practise as Attorneys, under pain of expulsion from the Employment of an Attorney, and not to be re-admitted.

9. That such Attorneys as have not been attending their Employment in this Court by the space of one year last past, unless hindred by sickness, be not allowed their privilege of Attorneys.

10. That for the prevention of maintenance and brogges, no Attorney be Lessee in an Ejectment, nor Bail for a Defendant in this Court in any Action.

Hill. 14. & 15. Car. Second. Regis.

IT is Ordered, That every Sheriff shall make, and cause to be entred on Record a sufficient Deputy, to receive all manner of Writs and Process, under the pains and penalties mentioned in the Statute in that behalf, made in the Three and Twentieth Year of the Reign of the late King Henry the Sixth, which Law shall from henceforth be duly put in execution.

And it is further Ordered, That the said Sheriffs, or their sufficient Deputies, shall give their Personal Attendance at Westminster-Hall daily in the Term-time; that so they may with the more covenience dispatch those Services which appertain to their Offices respectively; And that no Sheriff, nor Sheriff's Deputy, shall deliver or make, nor cause or suffer to be delivered or made, any warrant or warrants, before the writ or writs be duly sued forth, and delivered to the said Sheriffs, or their Deputies respectively: Neither shall the said Sheriffs, nor their Deputies, deliver, nor cause or suffer to be delivered, any blank Warrants: Nor shall any Clerk or Attorney of this Court receive, or procure to be made, any such blank Warrants, upon pain of severe punishment, and Fine to be imposed upon the said Sheriffs, and their Deputies, and utter expulsion of the said Clerks or Attorneys respectively offending in the Premises.

It is ordered by the Court, That no Bayliff nor Sheriffs Officer, shall presume to exact or take from any person, being in his Custody, by Arrest, any Warrant, to acknowledge a Judgement, but in the presence of an Attorney for the Defendant; which Attorney shall then subscribe his Name therunto: which said Warrant shall be produced, when the said Judgment shall be acknowledged: And if any Bayliff or Sheriffs Officer, shall hereafter offend, or do contrarywise, he shall be severely punished for so doing. And it is further ordered, that no Attorney shall from henceforth acknowledge, or enter, or cause to be acknowledged or entred, any Judgement, by colour of any Warrant gotten from any Defendant, being under Arrest; otherwise then is aforesaid.

Whereas many persons arrested upon mean Process issuing out of this Court, and upon Plaints levied in inferiour Courts, and removed to the Fleet by *Habeas Corpus*, with their Causes returned upon them, have been detained therefor a long time, as well in the Custody of Sheriffs and Constables, as in the Prison of the Fleet, without any prosecution or proceedings against them in this Court: Now forasmuch, as every person having cause of Action against any Prisoner in the Fleet, may have speedy proceedings against such Prisoner therefore; and also to prevent unjust vexation, by long detaining of persons in Prison there for the future. It is ordered by the Justices of the Court of Common-Bench, this present Saint Hillary Term, That if any person be committed to the Fleet by *Habeas Corpus*, in this present Term, or in any other Hillary Term, or in the Vacation following this Term, or any other Hillary Term, unless the Plaintiff or Plaintiffs, at whose Suit the Prisoner stands charged at the Fleet, shall bring such Prisoner to the Bar of this Court by *Habeas Corpus*, and declare against him within six dayes after Trinity Term begun, such Prisoner may be discharged by *Superseas*, to be issued of course out of the Prothonotaries Office of this Court, where the Commitment of the said Prisoner, with his Cause, is entred; so as such Prisoner first enter his Appearance by Attorney with the said Prothonotary, in case of an Attachment of Privilege, or of a Plaint, or with the Philezer, upon other Processes;

The Compleat Attorney.

cells returnable in this Court; And do bring a Certificate under the Hand of the Warden or Clerk of the Fleet, that no proceedings by *Habeas corpus* have been had against him within the time aforesaid; And that if any person be committed to the Fleet in any *Easter-Term*, or in the Vacation following any *Easter-Term*, unless the Plaintiff or Plaintiffs bring such Prisoner to the Bar of this Court by *Habeas corpus*, and declare against him within six dayes after *Michaelmas-Term* begun, such Prisoner shall be discharged in manner aforesaid.

And that if any Prisoner be committed to the Fleet in any *Trinity Term*, or in the Vacation next following any *Trinity Term*, unless the Plaintiff or Plaintiffs bring the Prisoner to the Bar of this Court by *Habeas Corpus*, and declare against him before the end of *Michaelmas Term* following, such prisoner may be discharged in manner aforesaid; And that if any prisoner be committed to the Fleet in any *Michaelmas Term*, or in the Vacation following, after any *Michaelmas Term*, unless the Plaintiff or Plaintiffs bring the prisoner to the Bar of this Court by *Habeas Corpus*, and declare against him within six dayes after *Easter Term* begun, such prisoner may be discharged in manner aforesaid; And the Plaintiff or Plaintiffs may declare upon such Appearance entered the next Term after such Appearance or *Superfedeas* granted. And the Attorney appearing for such prisoner shall be bound to take a Declaration, and not afterwards.

And as concerning persons arrested, and remaining in the Custody of any Sheriff or Goaler, upon any mean Process issuing out of this Court, It is further ordered, That if the Plaintiff or Plaintiffs, at whose Suit such person is arrested and in custody, do not remove such prisoner by *Habeas Corpus* to the Fleet, nor the prisoner enter Appearance in manner aforesaid, such prisoner may be discharged by *Superfedeas*, in the end of the Third Term after the Arrest, according to the course anciently used; and the Plaintiff may declare upon such Appearance the Term following, but not after.

But if such prisoner cause Appearance to be entered for him by Attorney, and cause notice thereof to be given to the Plaintiff or his Attorney; and if Oath thereof be made

In writing and filed in Court, unless the Plaintiff or Plaintiffs declare against such prisoner in the Term next after such Appearance, the prisoner may be discharged by *Super-jedeas*, so as Oath be made by the Attorney for the Defendant, that no Declaration hath been delivered or tendered to him; and the Plaintiff or Plaintiffs may declare against the Defendant the Term next after such Appearance ended, but not afterwards.

And for the certainty of the practice in proceedings to be had against prisoners in the Fleet, by vertue of the late Act of Parliament, It is further declared and ordered by this Court, That in case any such prisoner shall hereafter be brought to the Barre of this Court by a Writ of *Habeas Corpus*, returnable at any day certain, being before the Day of Appearance of the Third Return of any Term; and the said prisoner name an Attorney who shall appear for him at the Suit of the Plaintiff, the Action in the said Writ specified; the said Defendant being compellable to plead by the last Day of the said Term, to a Declaration, to be delivered to his said Attorney, if the Plaintiff give a Rule for him so to do: But where any prisoner is brought to the Barre by such Writ returnable, after the Day of Appearance of such Third Return of any Term, the Defendant (of course) is to have Imparlance untill the next Term following: But if such Prisoner refuse to nominate an Attorney to appear for him, then such prisoner is to plead within eight days according to the said Act; provided, there be eight days after the Return of the *Habeas Corpus*; to give a Rule to be out within the Term.

And lastly, it is ordered, That after issue joyned, ten days notice at the least exclusive of the day of such notice be given to the Defendant, (being actually in Prison of the Fleet) of the time of Tryal of such Issue to be had.



END

Concerning the Reformation and Punishment of abuses in general.

ORdered, That a Jury of able and credible Officers, Clerks, and Attorneys, once in three years be impanelled, and sworn to enquire,

1. Of the Points usually inquirable by the Writ, *viz.* falsities, contempts, misprisions and offences.

2. Of such who have been admitted Attorneys or Clerks, and are notoriously unfit, their names to be presented to the Court, and they to be punished or removed, as the case shall require.

3. Of new or exacted Fees, and of those that have taken them, under whatsoever pretence, and to prepare and present a Table of the due and just Fees, that the same may be fixed and continue in every Office, and likewise for the Fleet.

4. And that some persons be enjoined and sworn to give evidence, *viz.* some Clerks of the Court, and some Attorneys in every County, not excluding others.

Concerning the better preservation of Order among the Officers and Clerks, and observation of breach of Orders and Misdemeanours.

THat the Court do once every year in Michaelmas Term nominate twelve or more able and credible practisers in the Court to continue for the year ensuing, for these purposes hereafter limited.

That they or any six of them Examine such persons as shall desire to be admitted Attorneys, and appoint convenient times and places for the same: and in order thereunto, that such persons as shall desire to be admitted Attorneys, first attend the Prothonotary with his proof of service, then to repair to the persons appointed to examine Attorneys, & being approved, to be presented to the Court with the assignation of his approbation, and then to be sworn in open Court, unless some just exception be against him.

That they give information to the Court from time to time,

The Compleat Attorney.

of Breaches of Orders, and miscarriages of Officers, Attorneys, and Clerks.

That a settled course of practice and proceedings be settled, especially in those Cases where there hath been uncertainty, and that the inconveniencies in process, proceedings, and pleadings may be regulated unto a due course. In Order whereunto these several things are Ordered and directed according to the method of Proceedings.

I. Concerning the Entering of Records, and the persons by whom.

That no Rolls be delivered to be entred, but only to Clerks, or such Attorneys as have entred for the space of four years last past, for themselves.

That a Table be set up of the Names of the Officers and Clerks that are to be admitted unto the Rolls in the Treasury: and that such and no others be admitted thereunto, and that they may resort there as well for their Occasions, as for their Learning and Instruction, during the Term, and also twice in every week from a month after the Term, and that every such Clerk duly attend as well the Prothonotaries Office in the Term time, as for the Entering of Judgments upon Summons given by the Prothonotary respectively.

Whereas every Attorney of this Court, as well by his oath and the duty of his place, as under divers penalties provided by several Acts of Parliament, and former Orders of this Court, being retained to be Attorney for any person or persons Demandant or Plaintiff, Tenant or Defendant, in any Action or Suit in this Court, is bound to deliver or cause to be delivered his Warrant of Attorney to the Officer or his Deputy ordained for the receipt and entry thereof in this Court. And whereas by the Statute made in the Third year of the Reign of our late Sovereign Lord K. James, It is Enacted, That no Attorney shall permit any other to follow any Suit in his name; And that every Attorney so doing, should be excluded from being an Attorney for ever hereafter. And whereas by

Y 3

Order

The Compleat Attorney.

Order of this Court, every Attorney of this Court ought to appear in person upon or before the 14th day of *Michaelmas* Term; And upon or before the 7th day of every other Term, upon pain of 10 s. for the first default, 20 s. for the second default, and putting out of the Roll for the third default. And that the Appearance should be entred with the Clerk of the Warrants, and that the names of the defaulters should be delivered to the Court by the Clerk of the Warrant or his Deputy within 3 days after the time required for appearance. Notwithstanding all which Laws and Orders through the disorderly practice and negligence of divers Attorneys of this Court, especially of the younger sort, for want of their Attendance upon their Office of Attorney here in Court, and permitting others to practice in their names, and neglect to deliver their Warrants of Attorney to be filed and entred of record, very many great inconveniences, troubles and errors have been found and arisen of late time more then formerly to the scandall of the Court, and of the honest Attorneys practicing therein, and the great prejudice and loss of many of his Majesties good Subjects, as well Plaintiffs as Defendants, Demandants and Tenants in their duties depending in this Court.

For remedy whereof, and for avoiding of Errors for the time to come, it is forbidden by the Justices of this Court, upon pain of expulsion from this Court, That no Attorney of this Court permit any other to practice in his name: And it is further Declared and Ordered by this Court, That every Attorney of this Court do from henceforth appear in person within the times in every Term before limited and expressed under the penalties before mentioned for their defaults. And that every Attorney of this Court do file his Warrants of Attorney of the Term within any *Exigent* is awarded, *Demurrer* or Issue joyned, or Judgment entred; or which of any of them shall first happen, upon pain of 40 s. for every time he offendeth, and be attainted by due examination made by the Justices of this Court, such Warrant to be filed upon or before the *Essoyn* day of every *Trinity* Term, and within the space of 21 days next after the end of every other Term. And that no Officer of this Court do make or suffer to be made any process or entry in the name of any person not sworn an Attorney, nor entred in the Roll of Attorneys, or in the name of any person put out of the Roll of Attorneys either as a dis-

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continuer, or for any misdemeanours, or by any rule of Court after notice thereof given to such Officer by the Clerk of the Warrants of this Court for the time being, or his Deputy. And for the better effecting the due observance of this present Order, It is lastly Ordered, that the Clerk of the Warrants of this Court for the time being, or his Deputy, or the person appointed yearly by the Court to give Information to the Court from time to time of breaches of Orders, and miscarriages of Officers, Clerks, and Attorneys, in every Michaelmas Term, or oftner if required, shall and may present to the Court from time to time, the name and names of every Attorney or Attorneys offending against this Order, to the intent that the Court may examine every Attorney complained against concerning any of the matters before rehearsed: And upon such Attaint, any such Attorney upon due examination had, may inflict such punishment by Fine, Imprisonment, or Expulsion, as the case shall require; or give directions to be exhibited against the most frequent and notorious Offenders, for the greater penalties mentioned in the Statutes thereof made and provided.

For the prevention of the undue issuing of Judiciall Writs, and falsifying of Records; It is Ordered,

THat all Executions, and all other Writs issuing out of the Prothonotaries Offices be duly signed by the respective Prothonotaries before the same be sealed, and that no Exemplification of any Common Recovery or other Record which ought to be examined and signed by the Prothonotary, be sealed before the same have been signed by the Prothonotary. Nor that any Exemplification (excepting Exemplifications of Fines and Common Recoveries of the present or next precedent Term) be sealed, before they be first signed and examined by the Clerk of the Treasury.

And because the intermeddling and dealing of Clerks in more then one Prothonotaries Office at one time, hath been an occasion of disorder and uncertainty in proceedings: It is likewise Ordered, That every Prothonotaries Clerk do apply himself from henceforth to one Prothonotarie's Office only, and do give his attendance and make his Entries in that Prothonotaries Office.

2. Concerning Rolls and Records, and their Entries and Bringing in,

THat the whole proceedings of any Cause after Appearance be carried on in the Office of that Prothonotary where it was first entred, or Declaration delivered.

That no Rolls be carried into the Country, under pain that the Offender be excluded from entring any more Rolls afterwards as a Clerk.

That the Common Rolls of every Term, except *Easter*, be brought in to the Prothonotary fairly entred, and docketed at least ten days before the *Essoyn* day of the succeeding Term, under pain of ten shillings for every Roll wanting.

And that no Rolls be delivered to such person after any such offence the second time, without special Order.

That the respective Prothonotaries before the third day of the then next Term, do give in the Names of the Defaulters and Defaults unto the Court in Writing.

That the Rolls brought in to the Prothonotary, be delivered over to the Clerk of the Warrants the day before the *Essoyn* day of the ensuing Term, together with a Note of the Rolls that are wanting, the same Note to be subscribed by the Clerk of the Warrants, and redelivered to the Prothonotary.

That the Clerk of the Warrants within five days after Receipt of the Rolls from the Prothonotary, to deliver over the Common Rolls to the Clerk of the *Essoins*, taking the like Note from the Clerk of the *Essoins* of the Rolls wanting.

That the Clerk of the *Essoins* bind up the Rolls; viz. the first part before the appearance day of the second Return, the second part before the *Essoin* day of the third Return, the third part before the *Essoin* day of the next Term.

That the Rolls of *Easter* Term be brought to the Prothonotary on or before the first day of *Trinity* Term, delivered to the Clerk of the Warrants within six days, to the Clerk of the *Essoins* within five days after, to be bound up before the *Essoin* day of *Michaelmas* Term, each party subscribing the like Notes, and the penalties the same as before.

Concerning Original Suits and Process, where laid.

THAT Actions upon the Case, Trespass, for Goods, Assault or Imprisonment, arising in any English County, be laid in their proper Counties, unless they arise where Justices of *Nisi prius* seldome come. And because Trespass or Trover for goods, Battery, Imprisonment, and slander must needs be notorious in what County they arise; the Attorney knowingly laying them out of the proper County (unless in the Cases before expressed, or for such other Causes as shall be allowed by a Judge of the Court, and duly made appear to be true) be severely punished.

That although the Declaration be delivered seven dayes before the last day of the next precedent Term, or after, yet before plea upon Oath made, the Visne may be changed upon motion, in the said transitory actions, the next Term after: And the Defendant to plead to the new Action as he should have done in the other, without delay.

That the Visne may be changed (upon oath) as before, though the Defendant come in by *Exigent*.

Concerning Process, and serving thereof.

THAT according to the provision of the Statute of the one and thirtieth year of Queen *Elizabeth*, all Attorneys that sue out process of *Exigent*, be careful that Writs of Proclamation be delivered, and the Sheriff do take care duly to execute the same.

That according to the Statute of the Twenty third year of *Henry* the Sixth, a prisoner taken upon a *Capias* in process, be not discharged till he hath given Bond to appear, unless the Plaintiff or his Attorney shall consent to take an appearance without Bail. And in such case the Warrant of Attorney to appear, to be subscribed or accepted by the Defendants Attorney, and such Warrant not to be revoked, and an Attachment to be granted against the Bayliff offending herein, or against the Attorney refusing to appear or procure an appearance, having so Subscribed or Accepted.

And forasmuch as divers Sheriffs, Bayliffs of Liberties, and their Bayliffs respectively have of late time contrary to Law, and against former Orders of this Court, discharged persons taken

taken upon Outlawries without *Superfedeas*; It is hereby Declared, That such dealing is an abuse; and that all such who have or shall discharge such persons without *Superfedeas* shall be severely punished. And that no Sheriff, Under Sheriff, their Deputies or Bailiffs, may from henceforth discharge or set at Liberty any person or persons arrested upon any *Capias Utlagat* untill he receive a *Superfedeas* according to Law, from the Officer or Officers thereunto appointed.

Concerning a Habeas Corpus to Sheriffs and Gaolers.

That a *Habeas Corpus cum causa ad faciendum & recipiendum*, directed to any Sheriff (other than London or Middlesex) not to be returnable *immediate*, or in the vacation time, but at a day certain in Court in the Term.

That such *Habeas Corpus* to the Sheriff of London or Middlesex may be granted in Term or a Vacation time returnable *immediate*.

That in case of *Habeas Corpus*, returnable *immediate*, the Sheriff ought to make his return the same day that the Writ is delivered, and to bring the Body immediately as is required by the Writ, without permitting him to wander abroad by colour or pretence thereof.

That where a Writ of *Habeas Corpus* is directed to a Sheriff, Warden of the Fleet, Marshall or Gaoler, the prisoner is to be brought in custody according to the Writ at the day limited, without being permitted to wander abroad in the mean time, upon pretence of such Writ.

That a *Habeas Corpus ad respondendum* may be granted to the Warden of the Fleet, or to the Keeper of an inferiour Prison of a Liberty of Franchise, where a *Capias* is returned in Court, *Non est inventus*; such Writ to recite shortly the *Capias*, and to be returnable at a day certain in Court, and to be a good cause of *Detainer*, as well as where a *Capias ad respondendum* comes to a Sheriff.

That a *Habeas Corpus ad satisfaciendum* may be granted to the Warden of the Fleet, or to such inferiour Gaoler returnable in Court, at a day certain, and the Number Roll of the Judgment to be endorsed upon the Writ by the Attorney who

lues it out; and such Writs to be a cause of Detainer.

That if upon a *Habeas Corpus* the Prisoner be returned charged with process out of the Kings Bench or Exchequer, and out of the Common Pleas, the Prisoner may be committed with those Causes.

That if upon a *Habeas Corpus cum causa* the prisoner be returned charged with a process out of the Common Pleas, though returnable at a day to come, the Prisoner may be committed with his Cause.

That if upon a *Habeas Corpus*, or *Capi Corpus*, the party be returned in custody and Bailable, and special Bail requirable, the Bail not to be taken absolutely without consent of the Plaintiff or his Attorney; and if taken *de bene esse*, the prisoner not to be discharged till the Bail be assented unto, or the Plaintiff over-ruled in Court to accept the same upon Examination:

That upon every Commitment by a Judge out of Court, the prosecutor of the *Habeas Corpus* is to have one of the Prothonotaries Clerks present at the turning over of the Prisoner, that the Commitment may be duly entered and filed.

Concerning Habeas Corpus to Inferiour Courts, and Procedendo.

That Writ of *Habeas Corpus*, directed to the Inferiour Courts of London, Westminster, Southwark, and other Courts within five miles of London, may be returnable *immediate*. And if the Defendant intends to be bailed, then upon, or within four dayes after allowance of the Writ, Notice is to be given in writing of the Names and addition of the Bail, the time when, and the Judge before whom the same is intended to be put in, to the Plaintiff or his Attorney, or him that caused the Plaint to be entred; or if none can be found, then notice of the Premises to be left in writing with the chief Clerk of the inferiour Court, or his Deputy by the party that tenders the Bail, or his Attorney, and Oath made thereof; otherwise the Bail not to be taken. And a *Procedendo* granted if desired, before Bail accepted.

That if no Bail in such cases be put in within eight dayes after the *Habeas Corpus* allowed, in those Courts when it is returnable *immediate*, a *Procedendo* may be granted by any Judge

Judge of this Court, if desired before Bail taken.

And if Bail be taken in the absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*; and if exception be taken within twenty days after notice given to the Plaintiff or his Attorney of the names of the Bail, and before whom taken, then upon Oath made of such notice, the Bail to be delivered out to be filed.

That if Bail upon a *Habeas Corpus* be taken before a Judge at his Chamber, and not dissented unto, if not filed within four days after the twenty days, a *Procedendo* may be granted upon Certificate that it is not filed.

That in Term time the Plaintiff in the inferiour Court may speed the Defendant to put in, or to file his Bail by rules given in the Bill of Pleas; and if not filed according to rules, upon certificate thereof, a *Procedendo* to be granted.

That all Writs of *Habeas Corpus* returnable in Court, be returnable at a day certain.

That upon Bail taken of a person in custody, the Judges Clerk do deliver the Bail to the Prothonotary, to be filed, if assented unto; and to that end the Prothonotaries Fees to be deposited, but the prisoner not to be discharged, untill the Bail be assented unto, or over-ruled in open Court.

Concerning special Bail.

THAT if the Defendant appear upon the Summons, Attachment, or Distress, or by *Supersedeas quia improvide*; or doth truly render himself upon the *Exigent*, no Bail is requirable.

That in all causes of removal, be it by *Habeas Corpus*, Priviledge, or *Certiorari*, special Bail odght to be given.

That in causes where the Defendant comes in by *Capi Corpus*, be it Debt, Detinue, Trespass, for Goods, Action upon the Case (except slander) if the debt or damages amount to twenty pounds, special Bail is to be given, except it be against an Heir, Executor, or Administrator.

That in Covenant because the damages are uncertain, till Declaration, Bail at discretion.

That in Battery, Conspiracy, False Imprisonment, no speciall Bail of Course, without speciall order and motion.

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That in slander no special Bail, except in slander of Title, wherein to be left to the discretion of the Judges.

That in Privileges, other then for Fees and disbursements of an Attorney in this Court, Bail at discretion of the Court: In such case where in a Suit by a common person, especial Bail is not requisite.

That if Bail be given upon reversal of an Outlary, or removal by *Habeas Corpus*, the original to be shewn upon tendering of the Declaration, otherwise the Bail not liable; unless the party or his Attorney will voluntarily appear, or take a Declaration, without shewing of it.

That in case of a removal out of an inferiour Court, for reversal, the new original to agree in the nature of the Action, the summe in demand, and the County, otherwise the Bail not liable; but if the party will voluntarily appear to such varying original, to be good as to the party: but if upon a Cause removed by *Habeas Corpus*, out of the Courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, or *Pool*, which are Counties where the Judges of *Nisi Prius* seldome come, if the Action be transitory, it must be laid in the County of *Kent*, *Southampton*, *Tork*, *Stafford*, or *Dorset*, where the Town and County lyeth, and the Recognizance to be taken accordingly.

That the Principal rendering himself at any time after Bail put in, and before or upon the day of apparance of the *Scire Facias* returned, *Scire feci*, or of the second *Scire Facias* returned *nihil*; or in case there shall be an Action of debt brought upon the Recognizance against the Bail, then if the Principal shall render himself, upon or before the process returned served, no further proceedings to be against the Bail.

Concerning Apparances, and Entries thereof.

That apparances be duly entred with the Prothonotaries or Filizers of this Court respectively, with whom the same ought to be entred: but if special Bail be requirable in the Case, the Plaintiff not to be concluded by such apparances, if he insist upon it.

That where an apparance is upon the original Writ, if the Defendants apparance be not entred of Record, the Defendants Attorney to give his hand to the Plaintiffs Attorney upon the delivery of the Declaration, that he appeareth thereunto;

That

That any Attorney of either Bench accepting a Warrant to appear, or subscribing a Process, Declaration, or Warrant to appear, be compelled to cause appearance, or be liable to an Attachment, or put out of the Roll, as the case requires; and the Party not to be received to countermand such appearance after his Retainer.

That no person without Rule of Court, order of the Judge or Prothonotary, and notice to the adverse party or his Attorney, change or shift his Attorney, and such Attorney newly coming in, to take notice at his perill of the Rule whereunto the former Attorney was liable, had he continued.

That a Reteyner of an Attorney of the Common Pleas by an Attorney of the Kings Bench, & *Converso*, be a sufficient excuse to the Attorney so retained, acting according to such retyner, and the Attorney so retaining without warrant from the Party, to be subject to the punishment.

That if a *Capias* be returned in Court *non est inventus* against a Prisoner in the Fleet, he is compellable to appear upon a *Habeas Corpus ad respondendum*, as well at the Suit of a stranger, as at his Suit whereupon he is imprisoned, and to answer to a Declaration according to the rule of the Court, or that Judgement be entred against him.

That he that reverseth an Outlawry have an Attorney of Record present, who must undertake an Appearance to a new original. And such Attorney shall be compelled to appear, and that the Defendant or his Attorney give notice to the Plaintiff or his Attorney, of such reversal the same Term, or in the Vacation next after it.

Concerning Imparlanes.

That forasmuch as some Inconveniences do sometimes happen to Plaintiffs, by entering their Declaration in Special Actions, It is therefore Ordered, That the Plaintiffs in such Special Actions shall have liberty to enter the Imparlanes the Term following, entering the same of the first Term with an *Incipitur*; as it hath been usual in *Quare Impedit*; but that all other Imparlanes be duly entred before any *Issues*, or *Demurrers*, or Judgements thereupon be entred.

That if the Defendant appear the first Term, and give no Rules to declare, the Defendants Attorney may the second Term be compelled to accept of a Declaration with Impar- lance, and the Declaration may be entred as of that Term, with an Impar lance over to the next Term, or in the first Term with an *Incipitur*, as before, as the Case shall re- quire.

That if the Plaintiff declare not the second Term, though the Defendant give no Rules, yet a Non-suit may be entred at the end of the second Term upon a continuance over by him moved by *dis datus*, but not the third Term, or after.

That upon a meer reall Action, or a bare *clausum fregit*, an Impar lance of course. But in Dower after view had, if the day to appear be upon the first Return of any *Hillary* or *Trinity* Term, no Impar lance without Consent or Rule of Court.

That in Ejectment, or any personal Action, If the Appa- rance be the first Return of *Hillary* or *Trinity* Term, no Im- par lance without consent or special Rule in such Causes, o- ther than in *London* or *Middlesex*. If the Apparance be before *Quintin Martin* or *Mense Pasch*, no Impar lance without con- sent, or special Rule. But if upon or after those Returns, no Impar lance of course.

In *London* or *Middlesex*, if the Apparance be before *Craspin*, *assise*, or before the last Return of any other Term, no Im- par lance without a special Rule or Consent; but the Defen- dant to plead as of that Term within 14 days after the end of the Term upon Rule given to answer: but if of *Craspin*, *assise*, or the last Return, then an Impar lance of course.

Concerning Rules to Declare and Plead.

That no Judgement by *nihil dicit* be entred until there be a Rule to plead, first given in that Prothonotaries Of- fice, where the Cause is entred, and the day by such Rule be past, and that such Rules be only given in the Bills of Pleas, or other remembrances for that purpose, only to be in the custody of the Secondary of the respective Prothono- taries, during the time limited for giving of Rules, to the in- tent that all persons concerned may have recourse to the said Secondary, and to see the same *Gratis*; and that Clerks who usually enter for Attorneys, may give Rules for answer in the said Remembrances in all their own Causes wherein there hath

hath been Imparallances, except in Ejectments, so as they enter the same Rules in the Office, without carrying any of the said Remembrances out of any of the said Offices; and that the Secondary set down upon the Remembrances the day wherein such Rules are given, and that no Rules to declare or answer be given after three days exclusive after the end of any Term, and such Rule to be out at four dayes inclusive of the day wherein the same is given.

That in all Actions except Replevin (after rules to declare are out, yet) if the Plaintiff or his known Attorney or Clerk be to be found, a Nonsuit for want of a Declaration not to be entred, unless the Plaintiffs Attorney or known Clerk be first called to for a Declaration.

That if the Plaintiffs Attorney or Clerk be called to for a Declaration, and delivers it not to the Defendant or his Attorney sometime during that Term, then the Rule being out, the Defendants Attorney may enter a Nonsuit.

That if the Plaintiffs Attorney being called to for a Declaration, cannot afterwards find the Defendants Attorney or Clerk, to save a Nonsuit, he may deliver a Declaration into the Prothonotaries Office where the rule is given.

That when a Deed, Will, or Letters of Administration are to be shewn in a Declaration, the Attorney of the Plaintiff delivering a Declaration with a Subscription, that the Defendant shall not be compelled to plead till the same be shewn; no Judgement by *Nihil dicit* be entred against the Defendant till the same cause shewn: Nor any Nonsuit upon the Plaintiff, if he shew the same cause before the end of the next Term.

If the Defendant be committed to Prison by Process out of this Court or *Habeas Corpus*; the prisoner entring his Appearance with the Prothonotary in case of a plaint, or in case of attachment of privilege, or with the Filizer in case of other process, and giving Rules to declare, the Plaintiff not declaring before the end of the next Term after the commitment, the Defendant in reference thereunto to be discharged of his Imprisonment by *Superfedeas* in the end of the next Term, and liberty for the Plaintiff to declare upon that Appearance the next Term after that at the furthest.

That if a Writ be returnable 5 *Pasch.* or the last return of any Term, the Defendant giving rule, and calling for a Declaration, if it be not delivered according to the former directions, four days or more before the *Essoin* day of the ensuing

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ing Term, may enter a Nonsuit, though above 16 days after the preceding Term.

That the Plaintiff having declared and given a Rule for answer, the Defendant is to deliver his Plea in writing to the Plaintiffs Attorney, or known Clerk.

That if there be no such Attorney or Clerk to be found, or being found, refuseth to accept it, then the Plea may be left in the Office to save a Judgement.

That in any Case where a Plea or Declaration is left in the Office, no Nonsuit for want of a Declaration, or Judgement for want of a Plea be entred.

That in Cases of popular Actions, Informations, or real or mixt Actions, except Ejectment, no Judgement to be entred by default, or *nil dicit*, without a motion in Court.

That upon *Nul tiel* Record pleaded, and no difficulty or variance appearing, Judgement be entred after Rule, without motion by the Plaintiff.

That after any Imparance of three Terms, without any calling for answer, no Judgement to be entred without a *Terms* notice.

Concerning Declarations.

For avoiding of long and unnecessary Repititions of the Original Writ in Actions upon the Case, and personal Actions upon penal Statutes.

That Declarations in Actions of Trespas upon any general Statute; namely, Hue and Cry, Monopolies, and for Suits in the Admiralty, and such like, other than Debt, repeat not the Original Writ, but only the nature of the Action, viz. *A. B.* was attached to answer *C. D.* in a Plea of Trespas and Contempt, against the form of the Statute.

For the avoiding of the Common Bar, and new Assignment.

THE Declaration upon an Original, or Bill, *Quare clausum fregit*, may mention the place certainly, and so prevent the use and necessity of the Common Barr, and new Assignment.

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That unnecessary length of Declarations be reformed. And in order thereunto,

That in Actions of Covenant, not to repeat more of the Deed than is necessary for the assignment of the Breach, and not to repeat the Covenant in the conclusions.

That in Actions of Slander long Preambles be forborn, and no more inducement then what is necessary for the maintenance of the Record, when it requires a special inducement or *Colloquium*.

That in Actions upon general Statutes, the Declaration not to repeat the Statute, but to conclude against the form of the Statute in such case made and provided: as in case of Debt, upon the Stat. of the second year of *Edward* the sixth; For Tythes, the 32 of *Henry* the eighth; For Maintenance, 28 *Jac.* of Monopoly.

That Actions of Debt upon a Judgement had in the Courts of *Westminster*, to recite onely the Judgement. But if a Judgement had by or against an Executors or Administrators Debt, thereupon to repeat a Declaration and Judgement.

That before the Declaration actually entred, the Plaintiff may amend his Declaration, paying costs, or giving an Imparance at the Plaintiffs Election, by the Order of a Judge of the Court, or Prothonotary: But after it is entred, if the amendment be but a small matter that doth not deface the Roll, yet that before Issue or Demurrer entred, it be amendable by the Court, upon costs and liberty to plead, with a new or further Imparance,

To cause care in the Examination of the Declaration.

That if the Plaintiffs Attorney or Clerk deliver a Copy to the Defendants Attorney or Clerk, materially varying from the original Declaration, the disadvantage thereof not to be cast upon the Defendant, but on the Plaintiff, whose Attorney is paid for it.

Concerning Pleading.

THE Common Bar and New Assignment to be forborn, where the Declaration contains the certainty equivalent to a New Assignment.

That Pleadings be succinct, without unnecessary Repletions.

That in the pleading of an Outlawry, the *mesne* Process be not repeated, but the *Exigent*, and Outlawry joynted to the commencing of the Suit.

That in pleading a general Statute, the Statute be not recited: As the Statute of 21. of King *Jamés*, of Limitations.

Concerning Demurrers.

THAT according to the Stat. of 27 *Elix.* upon Demurrers, the Causes be specially assigned, and not involved with general unapplied Expressions of double, negative, pregnant, uncertain, wanting form, and the like; but to shew specially wherein, that the other party may (as the Case shall require) either joyn in demurrer, or amend; paying costs; or discontinue his Action.

That it be declared, that matters of form, as well on the part of him that demurs, as of him that joyns in all parts of the pleading, are discharged; unless such as are specially assigned upon the Demurrer.

Concerning Tryals, and notice of Tryals and Inquiries.

THAT notice of Tryals or Inquiries in *London* or *Middlesex*, (the Defendant dwelling within forty miles of *London*) be eight dayes exclusive of the day where notice is given.

That if the Defendant live above forty miles distant from *London*, notice of such Tryals and Inquiries in *London*, or *Middlesex*, be 14 dayes exclusive of the day of notice.

That in all issues to be tryed by *Nisi prius* in *London* or *Middlesex*, upon a Record of a precedent Term, the Copy of

the Issue be brought to the Clerk of the Treasury, for the ingrossing of the Record, four days at the least before the day of Tryal of such Issue; and that all Causes to be tryed in *London* or *Middlesex*, be entred into the Marshals Book four days before the day of Tryal.

That eight dayes notice exclusively be given upon Tryals in the Countrey, and upon Writs of Enquiry of Damages in Writs of Dower and Waste; and all other Enquiries of Damages.

That if the Plaintiff give notice of a Tryal, and he proceed not, the Plaintiff not to take it down to Tryal again, without new notice to be given, as is before expressed, unless by Consent or Rule of Court.

But in *London* or *Middlesex*, if Notice be given of a Tryal for one sitting, and the Plaintiff be not provided to proceed; Then if he give notice before the sitting, that he will try it the next sitting, that to be held convenient Notice.

That in case of such Warning, and no proceeding, the Defendant upon motion, to have his costs of his former attendance, to be taxed by the Prothonotary; unless the Plaintiff give the Defendant warning in convenient time that he would not proceed; or shew cause to be allowed by the Court in excuse of such Costs.

That no Record of *Nisi prius* be signed before the Issue be entred upon the Roll.

That if the Plaintiff give Notice for a tryal, and proceed not, the Defendant may take it by *Proviso* according to Law, giving Notice 8 or 14 days, as the Case requireth, as aforesaid.

That in *London* or *Middlesex*, if no warning for a tryal, then the Defendant not to take it by *Proviso*, to try it the same Term; but afterwards he may take it by *Proviso* according to Law, giving 8 or 14 days Notice, as the Case requires.

That if Notice be given to the Attorney of the adverse party of a Tryal upon an Issue joyned, it be taken to be good Notice: And Oath made of want of Notice to the Attorney, to turn the proof of Notice given to the party upon him that brought it down to Tryal in that Case.

That if an Issue be joyned above a year past in any Case, then one Terms Notice to be given of the Tryal.

Concerning Tryals at Barr.

THat for the remedy of excessive Charges of Tryals at the Bar, especially whilest the Jury lyeth out, it is ordered that a Jury lying out one night after a privy Verdict delivered, there be allowed for the whole Dyet of each Jurymen that Night no more than 3 s. 4 d. a piece, and for two Cryers, to each of them, no more than 2 s. Ordinary, besides the charge of the Jurors Lodging.

That after a Verdict delivered in Court, the Jury and Officers to be paid their Charges and Fees in the Inner-Treasury, without going to the Taverns or Victualling-houses for that Cause.

Concerning Special Verdicts at the Barr, or
by Nisi prius.

THat in finding special Verdicts where the Points are single and not complicated, and no special conclusion, the Council (if required) do subscribe the Points in question, and agree to amend omissions or mistakes in the *issue* Conveyance, according to the truth, to bring the point in question to Judgement.

That unnecessary finding of Deeds in *hac verba*, where the questions rests not upon them, but are only derivation of Title to be spared; and found shortly, according to the substance they bear in reference to the Deed, as Feoffment, Lease, Grant, &c.

Concerning new Tryals.

THat where a Verdict finds entire Damages, where Damages are the principal, and part not actionable, though Judgement be arrested, yet by rule of Court a *venire fac. de novo*, may issue as upon an ill Verdict, and upon the new Tryal the party may sever his Damages.

Concerning Judgements.

THat in a Judgement by *non sum Informatus*, or *nihil dicit* in *Ejectione Firme*, the *Capiatur* be entred upon the first Judgement.

That upon a cause removed by *Habeas Corpus* out of an Inferiour Court, having Jurisdiction of the Cause, if Judgement be given for the Plaintiff, the costs below to be considered and cast into the Judgement; if for the Defendant, the charge of putting in Bail.

That the Principal in any Bond or Bill obligatory do not for the time to come give warrant to appear for, or confess Judgement against his surety: and that after the Two and twentieth of *January* next, no Judgement be confessed for, or given against the Surety upon any such warrant given by the principal.

That sixteen dayes be allowed for the signing of Judgements after every Term, except *Easter* Term, upon Causes depending in the Term precedent.

And lastly, It is Declared by the Justices of this Court, That as the Court doth expect that all the Rules and Orders before mentioned be duly observed; so it is further Ordered, That all other former Orders and Rules yet in force, not hereby altered, suspended, or adnulled, be likewise Observed and put in Execution according to the true intent and meaning of the same.

By the Court.

The *OATH* to be taken by every Attorney of the Court of *Common-Pleas* at *Westminster*, before his admittance, to be administred openly in Court, by the chief Prothonotary.

You shall do no falshood or deceit, nor consent to any to be done within this Court: And if you shall know of any to be done, you shall give knowledge thereof to the Lord Chief Justice or other his Brethren,

thven, Justices of this place, that it may be reformed. You shall delay no man for lucre, or malice. You shall increase no Fees, but you shall be contented with the old Fees accustomed. You shall plead no forreign Pleas, nor sue any forreign Suits unlawfully, to the hurt of any man; but such as shall stand with the Order of Law, and your own Conscience. You shall seal all such Proceſs as you sue out of this Court, with the Seal thereof; and see the Fees paid for the same. You shall not wittingly nor wilkingly sue, or procure to be sued, any false Suit, nor give aid or consent to the same, upon pain to be expulsed from this Court for ever. And further, You shall truly use, and demean your self in the Office of an Attorney within this Court, according to your learning and discretion.

So help you God.

Rules and Orders for the Kings-Bench, formerly appointed by the Judges, and still in practice.

Concerning Officers and Attornies.

THat all Officers and Attorneys of this Court be admitted of some Innes of Court, or Chancery, in the same Term wherein they are admitted Officers or Attorneys, and be in Commons one Week in every Term, and take Chambers there; or in case that cannot be conveniently, yet to take Chambers or dwellings in some convenient place, and leave notice with the Butler where their Chambers or Habitations are, under pain of being put out of the Roll of Attorneys.

2. That all Officers and Attorneys of this Court, appear in person in this Court, upon, or before the 14. day of *Michaelmas* Term, and upon or before the 7. day of every other Term, upon pain of 10 s. for the first default, 20 s. for the second

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default,

default, and putting out of the Roll upon the third default. The appearance to be entred with the Prothonotary: And the Defaulters to be delivered to the Court upon Oath (if required) within three dayes after the time appointed for appearance.

3. That every Sheriff have his Deputy in this Court, to return and receive Writs. And that each Deputy yearly before *Hillary* Term, have his name and the place of his residence in *London* or *Westminster*, set and continued up in Tables, in the Office of the Prothonotary.

4. That the Clerks of Assize, their Deputies or Assistants, do personally appear with their *Posseas* on the first day of *Easter*, and *Michaelmas* Term; and the Deputy Sheriffs, and all other Officers of the Court do personally appear by the Essoyn day of every second Return of every Term; And continue there during the residue of the Term, without some just cause to the contrary allowed by the Court.

5. That for the future, Common Solicitors be not admitted to practice in this Court, unless they are admitted Attorneys of either Bench; provided that it extend not to the managing of Evidence at a Tryal, nor to private Solicitors, or Servants of Corporations, or other persons in the causes of their Masters.

6. That none be admitted an Attorney of this Court for the time to come, unless he hath practised as a common Solicitor in this Court by the space of five years now last past; or hath served, or shall have served by the space of five years, as a Clerk to some Judge, Sergeant at Law, practising Council, Attorney, Clerk or Officer of one of the Courts at *Westminster*, unless his Master die or give over his practice; And be also upon Examination found of good ability and honesty for such Employment; and that sufficient proof (to be put into writing) be made of such service to the Prothonotary upon a desire of Admittance, and then filed without Fee.

7. That no person practise in anothers name, nor that any Attorney knowingly permit another to practise in his name, upon pain of being put out of the Roll.

8. That Attorneys dismissed by one Court from their practice for misdemeanours, be not (after Certificate) admitted to practise in another Court, it being contrary to the intent of the Law.

9. That no Under-Sheriff or Balyff of Sheriffs or Liberties be admitted during such their employment, to practise as Attorneys, under pain of expulsion from the Employment of an Attorney, and not to be re-admitted.

10. That such Attornyes as have not been attending their Employment in this Court by the space of one year last past, unless hindered by sickness, be not allowed their privledge of Attorneys.

11. That for the prevention of maintenance and brocage, no Attorney be Lesse in an Ejectment, nor Bail for a Defendant in this Court in any Action.

Concerning Sheriffs and Balyffs.

THat for the prevention and remedy of delays and abuses in Sherffis, Under-Sheriffs, Balyffs of Liberties, and their Deputies, and other Bayliffs of Sheriffs, &c. &c. in execution of Process and Writs; If it shal appear that any such Officer shal wilfully delay the Execution, or Return of any Process or Execution, or shall take or require any undue Fees for the same, or shall give notice to the Defendant, thereby to frustrate the Execution of any Process, or Writ; or having levied money, shall detain it in their hands, after the times of the Returns of their Writs, besides the ordinary course of Amerciaments, The contempt of misdemeanour appearing, an Attachment, Information, Commitment, or Fine to be, as the Case requireth; and this as well in case of a late Sheriff, or person before mentioned, as of them at present in Office.

That, to reform the abuses by blank-Warrants granted by Sheriffs, whereby persons are arrested and driven to extorted Compositions for their liberty, without Process of Law, no Warrants be granted out to any Officer to arrest or attach any person before a Writ first come to the Sheriff.

And whereas Sheriffs have taken immoderate and excessive Fees for Execution of Writs of Possession, and Restitucion of possession contrary to Law; It is declared, That such immoderate Fees ought not to be taken; and in case such shall be taken, This Court to proceed to punish the same according to Law.

Concerning

*Concerning the Reformation and Punishment
of abuses in general.*

ORdered, That a Jury of able and credible Officers, Clerks, and Attorneys, once in three years be impanelled, and sworn to enquire.

1. Of the Points usually inquirable by Writ, *viz.* Falsities, Contempts, Misprisions, and Offences.

2. Of such who have been admitted Attorneys or Clerks, and are notoriously unfit, their names to be presented to the Court, and they to be punished or removed, as the case shall require.

3. Of new or exacted Fees, and of those that have taken them, under whatsoever pretence, and to prepare and present a Table of the due and just Fees, that the same may be fixed and continue in every Office; and likewise for the *Marshalsey*.

4. And that some persons be enjoined and sworn to give evidence, *viz.* some Clerks of the Court, and some Attorneys in every County, not excluding others.

*Concerning the better preservation of Order
among the Officers and Clerks, and observa-
tion of breach of Orders and Misdemeanors.*

That the Court do once every year in *Michaelmas* Term nominate twelve or more able and credible practisers in the Court to continue for the year ensuing, for these purposes hereafter limited.

1. That they or any of them Examine such persons as shall desire to be admitted Attorneys, and appoint convenient times and places for the same: and in order thereunto, that such persons as shall desire to be admitted Attorneys, first attend the Prothonotary with his proof of service, then to repair to the persons appointed to examine Attorneys, and being approved, to be presented to the Court with the assignation of his approbation, and then to be sworn in open Court, unless some just exception be against him.

2. That

2. That they give information to the Court from time to time, of Breaches of Orders, and miscarriages of Officers, Attorneys, and Clerks.

3. That a settled course of practice and proceedings be settled, especially in those Causes where there hath been uncertainty; and that the inconveniencies in Process, Proceedings, and Pleadings, may be regulated unto a due course, in order whereunto these several things are ordered and directed, according to the method of proceedings.

Concerning Original Suits and, Process, and where laid.

THAT Actions upon the Case, Trespass, for Goods, Assault or Imprisonment, arising in any English County, be laid in their proper Counties, unless they arise where the Justices of *Nisi prius* seldome come. And because Trespass and Trover for goods, Battery, Imprisonment, and slander, must needs be notorious in what County they arise; the Attorney knowingly laying them out of the proper County (unless in the Cases before expressed, or for such other Causes as shall be allowed by a Judge of the Court, and duly made appear to be true) to be severely punished.

That although the Declaration be delivered seven dayes before the last day of the next precedent Term, or after, yet before plea upon Oath made, the *Visue* may be changed upon motion, in the said transitory actions, the next Term after: And the Defendant to plead to the new Action as he should have done in the other, without delay.

That the *Visue* may be changed (upon oath) as before, though the Defendant come in by *Exigent*.

Concerning Process, and serving thereof.

THAT according to the provision of the Statute of 31. *Eliz.* all Attorneys that sue out Process of *Exigent*, be careful that Writs of Proclamation be delivered, and the Sheriffs do take care duly to execute the same.

That according to the Statute of the Twenty third year of *Henry* the Sixth, a prisoner taken upon a *Capias* in process, be not discharged till he hath given Bond to appear, unless the Plaintiff

Plaintiff or his Attorney shall consent to take an appearance without Bail. And in such case the Warrant of Attorney to appear, to be subscribed or accepted by the Defendants Attorney, and such Warrant not to be revoked, and an Attachment to be granted against the Bayliff offending herein, or against the Attorney refusing to appear or procure an appearance, having so Subscribed or Accepted.

Concerning a Habeas Corpus to Sheriffs and Gaolers.

THAT a *Habeas Corpus cum causa ad faciendum & recipiendum*, directed to any Sheriff (other than London or Middlesex) not to be returnable *immediatè*, or in the vacation time, but at a day certain in Court, in the Term, unless it be to deliver over to prison in discharge of his Bail.

That such *Habeas Corpus* to the Sheriff of London or Middlesex may be granted in Term or vacation time returnable *immediatè*.

That in case of *Habeas Corpus*, returnable *immediatè*, the Sheriff ought to make his return the same day that the Writ is delivered; and to bring the body immediately as required by the Writ, without permitting him to wander abroad by colour or pretence thereof.

That where a Writ of *Habeas Corpus* is directed to a Sheriff, Warden of the Fleet, or Goaler, the prisoner is to be brought in custody according to the Writ at the day limited, without being permitted to wander abroad in the mean time, under pretence of such Writ.

That a *Habeas Corpus ad respondendum* may be granted to the Warden of the Fleet, or the Keeper of an inferiour Prison of a Liberty, or Franchise, returnable at a day certain in Court, and to be a good cause of *Detainer*, as well as where a *Capias ad respondendum* comes to a Sheriff.

That a *Habeas Corpus ad satisfaciendum* may be granted to the Warden of the Fleet, or to such inferiour Goaler returnable in Court, at a day certain, and the Number Roll of the Judgment to be endorsed upon the Writ by the Attorney who sues it out; and such Writs to be a cause of *Detainer*.

That

That if upon *Habeas Corpus cum Causa*, the prisoner be returned charged with process out of the Common Pleas, or Exchequer, though returnable at a day to come, the Prisoner may be committed with those Causes.

That if upon a *Habeas Corpus* or *Capi Corpus*, the party be returned in custody and Bailable, and special Bail requirable, the Bail not to be taken absolutely without consent of the Plaintiff or his Attorney; and if taken *de bene esse*, the prisoner not to be discharged till the Bail be assented unto, or the Plaintiff over-ruled in Court to accept the same upon Examination.

Concerning *Habeas Corpus* to Inferiour Courts, and *Procedendo*.

THAT Writs of *Habeas Corpus*, directed to the Inferiour Courts of London, Westminster, Southwark and other Courts within five miles of London, may be returnable *immediatè*. And if the Defendant intendeth to be bailed, then upon, or within four dayes after allowance of the Writ, Notice is to be given in writing of the Names and addition of the Bail, the time when, and the Judge before whom the same is intended to be put in, to the Plaintiff or his Attorney, or him that caused the Plaint to be entred: or if none can be found, then notice of the Premisses to be left in writing with the chief Clerk of the inferiour Court, or his Deputy, by the party that tenders the Bail or his Attorney, and Oath made thereof; otherwise the Bail not to be taken. And a *Procedendo* granted, if desired, before Bail accepted.

That if no Bail in such cases be put in within eight dayes after the *Habeas Corpus* allowed, in those Courts where it is returnable *immediatè*, a *Procedendo* may be granted by any Judge of the Court, if desired before Bail taken.

And if Bail be taken in the absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*; and if exceptions be taken within twenty dayes after notice given to the Plaintiff or his Attorney, of the names of the Bail, and before whom taken; Then upon Oath made of such notice, the Bail to be delivered out to be filed.

That if Bail upon a *Habeas Corpus* be taken before a Judge at his Chamber, and not accepted against, if not filed within
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The Compleat Attorney.

four dayes after the twenty days, a *Procedendo* may be granted upon Certificate that it is not filed.

That in Term time the Plaintiff in the inferiour Court may speed the Defendant to put in, or to file his Bail by rules given; and if not filed according to Rules, upon Certificate thereof, a *Procedendo* to be granted.

Concerning special Bail.

That in all Causes of removall, be it by *Habeas Corpus*, Privilege, or *Certiorari*, special Bail ought to be given.

That upon a Cause removed by *Habeas Corpus*, out of the Courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, or *Pool*, which are Counties where the Judges of *Nisi Prius* seldome come, if the Action be transitory, it must be laid in the County of *Kent*, *Southampton*, *Tork*, *Stafford*, or *Dorset*, where the Town and County lyeth.

That in Covenant because the damages are uncertain, till Declaration, Bail at discretion.

That in Battery, Conspiracy, False Imprisonment, no special Bail of course, without special Order and Motion and Order.

That in Slander no special Bail, except in slander of Title, wherein to be left to the discretion of the Judges.

That in Privilege, other then for Fees or disbursements in Court, as an Attorney in this Court, Bail at discretion of the Court, In such case where in a Suit by a common person, special Bail is not requisite.

Concerning Apparances, and entring thereof.

That an Attorney of either Bench accepting a Warrant, or subscribing a Process, Declaration, or Warrant to appear, be compelled to cause apparance, or liable to an Attachment, or put out of the Roll, as the cause requires; and the Party not to be received to countermand such apparance after his Retejner.

That no person without Rule of Court, Order of Judge, or Prothonotary, and notice to the adverse party or his Attorney, change or shift his Attorney; And such Attorney newly

newly coming in, to take notice at his peril of the Rules whereunto the former Attorney was liable, if he continued.

That a Reteyder of an Attorney of the Common Pleas, by an Attorney of the Kings Bench, & *à Converso*, be a sufficient excuse to the Attorney so retained, acting according to such reteyder; and the Attorney so retaining without warrant from the Party, be liable to punishment.

Rules to Declare and Plead.

If the Defendant be committed to the Prison of the *Marshalsey*, by the Process of this Court, the prisoner giving Rules to declare, the Plaintiff not declaring before the end of the next Term after the Commitment inclusively, Then the Defendant in reference thereunto, to be discharged of the Imprisonment in the end of the second Term, upon Common Bail.

And if any Defendant be committed to any other Prison, upon any Process of this Court, giving Rules and notice, as before, and Oath thereof made; If the Plaintiff do not remove the prisoner, and Declare before the end of the second Term after the Commitment inclusively, Then the Defendant in reference thereunto likewise to be discharged of the Imprisonment in the end of the second Term, upon Common Bail.

Concerning Declarations.

For avoiding of long and unnecessary repetitions of the Original Writ in Actions upon the Case, and Personal Actions upon Penal Statutes.

That Declarations in Actions of Trespas upon the Case; or Personal Actions upon any general Statute, namely, *Hue-and-cry*, *Monopolies*, or for a Suit in the Admiralty, and such like, other then Debt, repeat not the Original Writ, but only the nature of the Action, viz. *A. B.* was Attached to answer *C. D.* in Plea of Trespas upon the Case, or in a Plea of Trespas and Contempt against the Form of the Statute.

For

For the ~~avoiding~~ of the Common Bar, and new assignment.

The Declaration upon an Original *Quare Clausum fregit*, may mention the place certainly, and so to prevent the use and necessity of the Common Bar and new Assignment.

That unnecessary Length of Declarations be reformed, and in Order thereunto.

THAT in Actions of Covenant, not to repeat it more of the Deed than is necessary for the Assignment of the Breach, and not to repeat the Covenant in the conclusion.

In Actions of Slander long Preambles to be forbore, and no more inducement than what is necessary for the maintenance of the Action; but when it requires a special enducement, or colloquium.

That in Actions upon general Statutes, the Declaration not to repeat the Statute, but to conclude against the form of the Statute, in such case made and provided; as in case of Debt upon the Statute of 2 Ed. 6. for Tythes, and 32 Hen. 8. for maintenance, 21 Jac. of Monopolies.

That in Actions of Debt upon a Judgement, had in the Courts at *Westminster*, to recite only the Judgement; but if a Judgement, had by or against an Executor or Administrator, then the Action of Debt upon that Judgement, to repeat the Declaration and Judgement.

That the Plaintiff may amend his Declaration, paying costs, or giving an Imparlance at the Plaintiff's election, by the order of Court, or a Judge, after it is entred, if the amendment be but a small matter, that it doth not deface the Roll.

Concerning the entring of Rolls, and by whom.

THAT no Rolls be delivered to be Entred, but to the Prothonotaries Clerks.

That no Rolls be carried into the Countrey, under pain that the Offender be excluded from entring any more Rolls afterwards as a Clerk.

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Concerning Imparlanes upon Suits by Original

Forasmuch as some inconveniences do sometimes happen to the Plaintiffs, by entering their Declaration in special Actions; It is therefore Ordered, That the Plaintiffs in such special Actions, shall have liberty to enter Imparlanes the Term following, entering the same of the first Term with an *Incipitur* as it hath been usual; and that all other Imparlanes be duly entered before any Issues, Demurrers, or Judgements thereupon be entered.

That if a Defendant appear the first Term; and give no Rules to declare, the Defendants Attorney may the second Term be compelled to accept a Declaration with an Imparlance, and the Declaration may be entered as of that Term, with an Imparlance over to the next Term, or in the first Term with an *Incipitur*, as before, as the Case shall require.

That if the Plaintiff declare not the second Term, though the Defendant give no Rules, yet a Non-suit may be entered at the end of the second Term, upon a continuance over by him; by *dis agens*, but not the third Term, or after.

Upon meer reall Action, an Imparlance to be of course.

Thus in Ejectment, or any personal Action, If the Appearance be the first Return of *Hilary* or *Trinity* Term; no Imparlance without consent or special Rule.

In Causes, other than in *London* or *Middlesex*, if the Appearance be before *Crastinum Martini* or *Mensem Pasche*, no Imparlance without consent, or special Rule; But if upon, or after those Returns, an Imparlance of Course.

In *London* or *Middlesex*, if the Appearance be before *Crastinum Ascensionis*, or before the last return of any other Term; no Imparlance without Consent or special Rule; but the Defendant to plead as of that Term, within fourteen days after the end of the Term, upon Rule given to answer; but if of *Crastinum Ascensionis*, or the last Return, then an Imparlance of Course.

If a writ be Returnable *Quinqu Pasche*, or the last Return of any Term, the Defendant giving Rules, and calling for a Declaration, if it be not delivered four days before the Return day of the ensuing Term, or more, a Non-suit to be entered.

Concerning Pleading.

THE Common Bar and New Assignment to be forborn, where the certainty is contained in the Declaration, equivalent to a New Assignment.

That Pleadings be succinct, without unnecessary Repetitions.

That in the pleading of an Outlawry, the mean Process be not repeated, but the *Exigent*, and Outlawry joyued to the commencing of the Suit.

That in pleading a general Statute, the Statute be not recited; As the Statute of 21. of King *James*, of Limitations.

Concerning Demurrers.

That according to the Statute of 27 *Eliz* upon Demurrers, the Causes be specially assigned, and not involved with general unapplied Expressions of double, negative, pregnant, uncertain, wanting form, and the like; but to shew specially wherein, that the other party may (as the Cause shall require) either joyn in denurrer, or amend, paying costs, or discontinue his Action.

That it be declared, that matters of form, as well on the part of him that demurs, as of him that joyns in all parts of the pleading, are discharged; unless such as are specially assigned upon the Demurrer.

Concerning Tryals, and notice of Tryals and Inquiries.

IF the Plaintiff give Notice of a Tryal, and he proceed not, the Plaintiff not to take it down to Tryall again, without new notice to be given, unless by Consent or Rule of Court.

That in case of such Warning, and no proceeding, the Defendant upon motion, to have his costs of his former attend-

The Compleat Attorney.

nace, to be taxed by the Prothonotary; unless the Plaintiff give the Defendant warning in convenient time that he would not proceed; or shew cause to be allowed by the Court in excuse of such Costs.

Concerning Tryals at Barr,

THat for the remedy of excessive Charges of Tryals at the Bar, especially whilest the Jury lyeth out, it is ordered that a Jury lying out one night after a privy Verdict delivered, there be allowed for the whole Dyet of each Jurymen that night no more then 3 s. 4 d. a piece, and for two Tipstaves, and one Cryer or Usher, to each of them, no more than two shillings Ordinary, besides the Charges of the Jurors Lodging.

Concerning Special Verdicts at the Bar, and by Nisi Prius.

IN finding of Special Verdicts where the Points are single, and not complicated, and no special conclusion, the Council (if required) do subscribe the Points in question, and agree to amend the omissions or mistakes in the mean Conveyance, according to the truth, to bring the point in question to Judgment.

That unnecessary finding of Deeds in *hac verba*, where the question rests not upon them, but are onely derivation of Title, to be spared, and found shortly, according to the substance they bear in reference to the Deed, as Feoffment, Lease, Grant, &c.

Concerning new Tryals.

THat where a Verdict finds entire Damages, where Damages are the principal, and part not actionable, though Judgment be arrested, yet by rule of Court a *venire fac. de novo*, may issue as upon an ill Verdict, and upon the new Tryal the party may sever his Damages.

Concerning Judgements.

That upon a cause removed by *Habeas Corpus* out of an Inferiour Court, having Jurisdiction of the Cause, if Judgment be given for the Plaintiff, the Costs below to be considered and cast into the Judgment; if for the Defendant, the charges of putting in Bail.

That in a Judgement by *non sum Informatus*, or *nihil dicit*, in *Ejectione Firme*, the *Capiatur* be entred upon the first Judgment.

And lastly, It is declared, That as the Court doth expect, that all the Rules and Orders before mentioned, shall be duly observed; and are resolved severely to punish such as shall break or neglect any of them. So it is further declared, That all other former Orders and Rules yet in force, not hereby altered, suspended, or adnulled, shall be likewise observed and put in Execution according to the true intent and meaning of the same.

By the Court.

The OATH to be taken by every Attorney of the *Kings-Bench*, before their Admittance.

You shall do no falshood or deceit, nor consent to any to be done within the Court of *Kings-Bench*: And if you shall know of any to be done, you shall give notice thereof to the Lord Chief Justice and other his Brethren, Justices of that Court, that it may

be reformed. You shall delay no man for lucre, or malice. You shall increase no Fees, but you shall be contented with the old Fees accustomed. You shall plead no forreign Pleas, nor sue any forreign Suits unlawfully, to the hurt of any man; but such as shall stand with the Order of Law, and your own Conscience. You shall seal all such 'Process' as you sue out of this Court, with the Seal of the said Court, and see the Officer satisfied for the same. You shall not wittingly nor wilfully sue, or procure to be sued, any false Suits, nor give aid nor consent to the same, upon pain to be expulsed the said Court for ever. And further, You shall use, and demean your self in the Office of an Attorney within this Court, according to your learning and discretion.

So help you God.

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Orders

Orders heretofore used in Chancery, with such alterations and additions as the Right Honourable Edward Earl of Clarendon, Lord High Chancellor of England, with the advice and assistance of the Honourable Sir Harbottle Grimstone Baronet, Master of the Rolls, have thought fit to ordain.

Bills.

THat no Councillor do put his hand to any Bill, Answer, or other Pleading, unless it be drawn, or at least perused by himself in the paper draught before it be ingrossed (which they shall do well for their own discharge, to sign also after perusal), And Counsel are to take care that the same be not stuffed with repetition of Deeds, Writings, or Records, *in hac verba*: but the effect and substance of so much of them only as is pertinent and material to be set down, and that in brief terms, without long and needless traverses of Points not traversable, tautologies, multiplication of words, or other impertinencies occasioning needless prolixity, to the end the ancient Brevity and Succinctness in Bills and other pleadings, may be restored and observed: Much less may any Council insert therein matter meerly criminal or scandalous, under the penalty of good costs, to be laid on such Council, to be paid to the party grieved, before such Council be heard in Court.

That all Bills be dated the same day they are brought into the Six Clerks Office, and that no Six Clerk presume to Antedate any Bill, and that no Under-Clerk presume to keep any Bill by him, but with the first opportunity deliver the same to the Six Clerk, or his allowed Deputy, in his absence to be accordingly filed.

No Bill, Answer, or other pleading shall be said to be of Record, or to be of any effect in Court, untill the same be filed with such of the Six Clerks with whom it ought properly to remain.

Subpœna's.

Subpœna's.

That all Plaintiffs may have liberty to take forth *Subpœna's ad respondendum*, before the filing of their Bills, if they please, notwithstanding any late Order or Writage to the contrary.

That every *Subpœna* to answer, revive, review, rejoyne, to testify or to hear Judgement, shall be served personally, or left at the Defendants dwelling house or place of residence, with one of the Family. And no Clerk of this Court shall issue any Attachment for not appearing, but upon *Affidavit* first made, positive and certain of the day and place of such service of the *Subpœna*, and the time of the return thereof, whereby it shall appear that such service was made, if in *London*, or within twenty miles thereof, four dayes at the least, excluding the day of such service: And if above twenty miles, then to have been eight dayes before such Attachment entered: And that such Attachment shall not be discharged, but upon payment of usual costs, and so the succeeding costs to be double.

Pleas and Demurrers.

FOrasmuch as the Defendant being served with process to answer, may by advice of Council upon sight of the Bill only be enabled to demur thereunto, if there be cause, or may by like advice be enabled to put in any just Plea which he hath in disability of the person of the Plaintiff, or to the Jurisdiction of the Court: It is therefore Ordered, That such Demurrer, or such Plea in disability, or to the jurisdiction of the Court, under the hand of Council Learned, shall be received and filed, although the Defendant do not deliver the same in person, or by Commission. And therefore if the Defendant shall pray a Commission, and thereby return a Demurrer only, or only such a plea, which shall be afterwards over-ruled, the Defendant shall pay five marks costs: and although it be allowed, the Defendant shall have no costs in respect of the Plaintiffs needless trouble occasion'd by such Commission.

Every Demurrer shall express the several causes of Demurrer, and shall be determined in open Court. And such Pleas also as are grounded upon the substance and body of the mat-

ter, or extend to the Jurisdiction of the Court, shall be determined in open Court; And for that purpose, the Defendant is to enter the same with the Register, within eight dayes after the filing thereof; or in default of such entry made, the same shall be disallowed of course, as put in for delay. And the Plaintiff may then take out process to enforce the Defendant to make a better answer, and pay forty shillings costs; and the same shall not afterwards be admitted to be set down or debated, unless upon Motion it shall be Ordered by the Court: And if any cause of Demurrer shall arise, and be insisted on at the debate of the Demurrer (more than is particularly alledged) yet the Defendant shall pay the ordinary costs of Overruling a Demurrer (which is hereby Ordered to be five marks costs) if those causes which are particularly alledged be disallowed: although the Bill, in respect of that particular so newly alledged, shall be dismissed by the Court.

A Plea of Outlawry, if it be in any Suit for that duty, touching which relief is sought by the Bill, is insufficient according to the Rule of Law, and shall be disallowed of course, as put in for delay: And the Plaintiff may notwithstanding such Plea, take out process to enforce the Defendant to make a better answer, and pay five Marks costs; otherwise a Plea of Outlawry is always a good plea, so long as the Outlawry remaineth in force: And therefore the Defendant shall not be put to set it down with the Register. And after the said Outlawry reversed, the Defendant upon a new *Subpæna* served on him, and payment unto him of twenty shillings costs, shall answer the same Bill, as if such Outlawry had not been: But if the Plaintiff conceive such plea of Outlawry thorough mispleading, or otherwise to be insufficient, he may, upon notice given to the Clerk on the other side, set it down with the Register, to be debated with the rest of the Pleas and Demurrers in course: But if the Plaintiff shall not in such Case enter it with the Register within eight dayes after the same shall be filed, the Defendant may take out process against the Plaintiff for his ordinary Costs of five marks, as if the same had been heard.

The Dependency of a former Suit for the same matter, is also a good plea, and therefore the Defendant shall not be put to set it down with the Register: But if the Plaintiff be not satisfied therewith, the same shall be referred to one of the Masters of the Court to certify the truth thereof; and if it shall

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shall be determined against the Plaintiff, he shall pay five pounds costs to the Defendant: But such Reference shall be procured by the Plaintiff, and a Report thereupon within one month after the filing of such Plea, otherwise the Bill to stand dismissed of course, with the ordinary costs of seven Nobles.

If after a Suit commenced at the Common-Law, or any other inferior Court, a Bill shall be exhibited in this Court to be relieved for the same matter, the dependancy of the former Suit shall be admitted as a good Plea, and the Defendant not be put to Motions for an Election or Dismissal, and that Plea shall be proceeded in, as in case of a Plea of a former Suit depending in this Court for the same matter.

After a Contempt duly prosecuted to an Attachment with Proclamation returned, no Commission to answer shall be made, nor no Plea or Demurrer admitted, but upon Motion in Court, and Affidavit made of the parties inability to travel or other good matter to satisfy the Court touching that delay.

Answers.

After a Commission once obtained to answer, no second Commission shall be granted, without special Order of Court, upon good reason shewed to induce the same, or the Plaintiffs own assent.

An Answer to a matter charged as a Defendants own fact, must regularly be without saying, *To his Remembrance*, or *As he believeth*, if it be laid to be done within 7 years before, unless the Court upon Exception taken, shall find special cause to dispence with so positive an Answer. And if the Defendant deny the fact, he must traverse or deny it (as the cause requires) directly, and not by way of negative pregnant. As if he be charged with a Receipt of a sum of money, he must deny or traverse that he hath not received that sum, or any part thereof, or else set forth what part he hath received. And if a fact be laid to be done with divers circumstances, the Defendant must not deny or traverse it literally, as it is laid in the Bill, but must answer the point of substance positively and certainly.

When the Defendants have answered, the Plaintiffs and their Council are seriously to advise of the Answers; and if they

they find that upon the Answer alone, without further proof, there be sufficient ground for a final Order or Decree, to proceed upon the Answer, without further lengthening of the Cause. Or if it be needful to prove one or a few particular points to reply unto those points, and not to draw into pleadings or proofs any more then those necessary points, thereby making long Books, and putting both sides to unnecessary Charges, the Defaulters herein to be punished by paying the charge of the Copies, or otherwise, as cause shall require.

If a Hearing be pray'd upon Bill and Answer, the Answer must be admitted to be true in all points, and no other Evidence to be admitted, unless it be matter of Record, to which the Answer refers, and is proveable by the Record : The Plaintiff is therefore to be well adviſed, that the Court be not put to an unnecessary trouble, and himself to a certain charge, in bringing his Cause to hearing, which will not bear a Decree.

Exceptions.

When a Plaintiff excepteth to a Defendants Answer, he shall set down his Exceptions in Writing ; and if the Answer be filed in Term time, he shall the same Term, or within eight dayes after that Term, deliver the same Exceptions to the Councell, whose hand is to the Answer, or to the Defendants Clerk in Court ; And if the Defendants do within eight days after such delivery, satisfy the Plaintiff of the invalidity of those exceptions, or amend the Answer in the same time, or agree with the Plaintiff, or his Clerk, or Solicitor, to amend it accordingly, and pay 20 shillings costs, the Plaintiff shall go on to Reply : But if the Defendant shall fail to do the same, or put in a second insufficient Answer, the Plaintiff may get the Answer or Answers referred : and if the same shall be ruled insufficient, the Defendant shall pay 40 shillings costs. But if an Answer be filed in Vacation time, then the Plaintiff shall have eight days in the beginning of the next Term, if he see cause to put in his Exceptions, and deliver them in writing in like manner, as before is appointed : and the Defendant within eight days after such delivery to proceed as before is ordered.

If the Plaintiff shall procure a Reference of an insufficient Answer within the time before limited, and the same be reported good, the Plaintiff shall pay the Defendant forty shillings costs.

If the first Answer be certified insufficient, and ruled so, the Defendant shall pay forty shillings costs as aforesaid, if the Answer was put in in person: But if the same came in by Commission, the Defendant shall have fifty shillings costs, and no new Commission shall be awarded for taking a second Answer, unless it be by Order, upon Affidavit made of the parties inability to travel, or other good matter, to satisfy the Court touching that delay, and first paying the costs of such insufficient Answer, or by the Plaintiff, or his Clerks assent for expediting the Cause. If the second Answer be reported insufficient unto any the points formerly certified, the Defendant shall pay three pounds costs: And upon the third insufficient, four pounds costs; And upon a fourth Answer certified insufficient, he shall pay five pounds costs, and be examined upon Interrogatories to the points reported insufficient, and shall be committed, untill he hath perfectly answered those Interrogatories, and paid the costs, in respect of the great vexation and delay, which in such cases will happen to the Plaintiff.

No *Subpoena ad rejunquentum*, shall be of force, unless there be a Replication filed in the Cause, according to the course of the Court, before the issuing out of the said *Subpoena*, or at least before the return thereof: And the parties upon whom such *Subpoena* shall be served finding no Replication filed before the return thereof, shall have the ordinary costs taxed, according to the course of the Court.

Examination of Witnesses.

When the parties are at Issue, and proceed to examine Witnesses, the Interrogatories are to be penned with care, that the same be pertinent, and onely to the points necessary, and the witnesses are to be sorted and examined on those Interrogatories onely that their Testimony doth extend unto, without the needless Interrogatories of matters unnecessary or immaterial, as well to avoid the charge of both parties, Plaintiff and Defendant, in superfluous Examinations, as that apt Interrogatories (which are the life of the cause) may be exhibited.

No

No Witness shall be examined in Court by the Examiner, without the privity of the adverse party, or of his Clerk who deals for the adverse party, to whom the person to be examined shall be shewed, and a Note of his name and place of dwelling delivered in Writing, by such as shall produce him; and the Examiner is to take care, and be well satisfied, that such Notice be given; and then shall add to the Title of the Witnesses Examination, the time of such notice given, and the Name of that person to whom it is given, and by whom, that at the hearing of the Cause the Suiter be not delayed, upon pretence of want of notice.

When Witnesses are examined in Court upon a Schedule of Interrogatories, there shall be no new Interrogatories put in to examine the same Witnesses; nor shall any Witnesses be examined in Court after the day of Publication, though they were sworn before, so as a Copy of the Rule or Order whereby Publication passed, be delivered to the Examiner, that he may take notice thereof.

That all Copies of Bills, Answers, Depositions, or other Record, or thing whatsoever belonging to the Six Clerks to copy, shall contain fifteen Lines at the least in every sheet of Paper, written fairly and orderly, and unwastefully: And that no such Copy shall be henceforth delivered out of the Office, before it be signed by such Six Clerk to whom it belongeth, with his own proper hand-writing, or by his Deputy in his absence;

Nor any Copy not so signed, shall be made use of in Court, or before any Master, which all Clients are to take notice of, to the end they may be prepared with such Copies at the hearing of their Causes.

And whereas many inconveniences do frequently arise by undue Copying Bills, Answers, and other Pleadings, before they be filed; so as they are neither filed, or very irregularly, to the prejudice of the Client, and trouble to the Court, by unnecessary Motions: It is therefore ordered, That no Under-Clerk, or his man, or other for him, do from henceforth presume to copy any Bill, or other Pleading whatsoever, before it be duly filed with the proper Six Clerk, who ought to file the same.

For preventing of Perjury, and other Mischiefs often appearing to the Court, the Examiner is to examine the Depo-
nent to the Interrogatories directed *seriatim*, and not to per-

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he high to read over, or hear read any other Interrogatories, until that in hand be fully finished, much less is he to suffer the Deponent to have the Interrogatories, and pen his own Depositions, or depart after he hath heard an Interrogatory read over, untill he hath perfected his Examination thereunto.

And if any Witness shall refuse so to conform himself, the Examiner is thereof to give notice to the Clerk of the other side, and to proceed no further in his Examination, without the consent of the said Clerk; or Order made in Court to warrant his so doing.

The Examiner shall not examine any witnesses to invalid the Credit of any other witness, but by special Order of the Court, which is sparingly to be granted, and upon Exceptions filed with the Examiner without fee, and notice thereof given to the adverse party or his Clerk, together with a true Copy of the said Exceptions at the charge of the party so examining.

The Examiners (in whom the Court repositeth much confidence) are themselves in person to be diligent in Examination of Witnesses, and not intrust the same to mean and inferior Clerks; and are to take care to hold the Witnesses to the point interrogated, and not to run into extravagancies, and matters not pertinent to the Question, thereby wasting Paper for their own profit, of which the Court will expect a strict accompt.

The Examiners are to take care that they imploy under them in their Office, none but persons of known integrity and ability, who shall take an Oath, Not to deliver or make known directly, or indirectly, to the adverse party, or any other, save the Deponent; who comes to be examined in any of the Interrogatories delivered, to be examined upon any Examination by him taken, or remaining in the Examiners Office, an Extract Copy, or breviate thereof, before publication be thereof passed, and Copies thereof taken. And if any such Deputy, Clerk, or person so employed, shall be found faulty in the premises, he shall be expelled the Office; and the Examiner who so employed him, shall be also answerable to the Court for such misdemeanour, and to the party grieved, for his costs and damages sustained thereby: And such Solicitor or other person, who shall be discovered to have had a hand therein, shall be liable to such censure for the offence, as the Court shall find just to inflict upon him.

In

In examining of Witnesses, the Examiner shall not use any idle Repetitions, or needless Circumstances, nor set down any Answer to the Questions, to which the Examinant cannot depose, other then thus; *To such an Interrogatory this Examinant cannot depose.* And in case such Impertinencies be observed by the Court, the Examiner is to recompence the charge thereof to the party grieved, as the Court shall award.

That after Witnesses examined in Court, there shall be two Rules only given for Publication, (*viz.*) An Ordinary Rule, and then a day to shew cause why Publication should not pass, and upon the return of a Commission, one Rule only to be given, within which times aforesaid, if the other side do not shew unto the Court good cause unto the contrary, Publication shall pass accordingly.

All pleadings, Commissions, Certificates, belonging to the Six Clerks to receive, shall immediately, upon the bringing in, or return thereof into this Court, be delivered to such Six Clerks own hands, as shall be Attorney in the Cause or to the hands of his Deputy in his absence: And not be from henceforth in any wise kept back, nor any Depositions or Answers taken by Commission, or other Commission to be opened by any of their Under Clerks, before they be so delivered.

No bills, warrants, pleadings, commissions, decrees, dismissions, or other Records whatsoever, shall from henceforth be carried to be ingrossed, inrolled, copyed or otherwise used by any of the Under Clerks to their Chambers, or elsewhere out of the Six Clerks Office, or lodgings there, and so soon as any Clerk shall have ingrossed, inrolled, copyed, or used any such warrant, pleading, Commission, decree, or other Record in the said Office, he shall bring the Original thereof presently back, to such Six Clerk to whom the custody thereof doth belong, for the more safe keeping and disposing thereof according to the ancient usage.

Com

Commissions.

WHen a Commission is awarded to examine Witnesses, if by default of him that hath the carriage of the Commission, or by his Commissioners nothing is done, he shall bear all the charges that the other side was put unto about that Commission, either for Fees of Court, bringing or entertaining Commissioners, or Witnesses, or otherwise to be ascertained by the Oath of the party, or of him that disbursed the money for him, and shall renew the Commission at his own charges.

When a Commission is awarded to examine Witnesses, and the one side produceth and examineth all his Witnesses, and the other side doth not, but pray a new Commission; if it be granted, he shall bear all the charges of the renewed Commission, both in Court, and in the Countrey, as well for the charge & entertainment of his own Commis. as of the Commis. on the other side, and the other side shall be permitted to cross-examine the Witnesses produced by him that reneweth the Commission; but if he will examine any other witnesses of his own, then he shall bear his own part of the charge; the charges herein mentioned to be ascertained by the Oath of the party, or of him that disbursed the money for him.

He at whose instance a Commission to examine Witnesses after a former Commission executed and returned, is once renewed, and he by whose default, or by default of his Commissioners, a former Commission was not executed, and thereupon it is renewed, shall at his peril examine all his Witnesses by that renewed Commission, or examine them in Court by the end of the Term, wherein that renewed Commission is returnable without any more or further delay.

That no Commission *ad examinandum testes* be executed in London, or within ten miles thereof, without special order first obtained upon *Affidavit* made of the parties inability to travel, or other good matter. And that all Depositions taken by Commission in London, or within ten miles thereof, without special order as aforesaid, shall stand superseded and suppressed *ipso facto*, and not allowed to be read as Evidence at the hearing of the Cause. And the parties who shall cause the same to be so executed, shall suffer such punishment for their

their contempt and irregularity, as the Court shall think fit.

Depositions.

WHERE either the party Plaintiff or Defendant, obtaineth an Order to use Depositions of Witnesses taken in another cause, the adverse party may likewise use the same without Motion, unless he be upon special reason shewed to the Court by that party first desiring the same, inhibited by the same order so to do.

No motion shall be made in Court, or by Petition for suppressing of Depositions as irregularly taken, untill the Six Clerks not towards the cause have been first attended with the complaint of the party grieved, and shall certify the true state of the Fact to the Court, with their opinion: If the Attorneys or Clerks on either side, shall not for the case of their Clyents agree before them; for which purpose, a Rule for attendance of the Six Clerk in such case, shall be entred of course with the Register at the desire of the party complaining, which shall warrant their proceedings, and certificate to the Court.

Causes to be set down for hearing.

THE Six Clerks who are the only Attorneys in this Court ought to inform themselves continually of the state and proceedings of their Clyents causes, whereby they may be able to defend their Clyents causes, and to give account to the Court as the Attorneys in all other Courts do, and not to leave the care and knowledge thereof upon their under-Clerks, who attend not in Court, and the Clyents and such as follow their causes, are to acquaint their Attorneys for that purpose.

Such as desire to have their Causes set down for hearing, must repair to the Six Clerk that is Attorney in the cause, at least six days before the end of the Term, that the Six Clerk may inform himself of the state of the Cause, of the long or short dependance thereof in Court, of the Antiquity of the publication, of the weight or value of the cause, and all other Circumstances material to inform the Lord Chancellor, Lord Keeper, or Master of the Rolls, of the time of

the setting down of causes, and the Six Clerk may not refuse to offer the same to be set down, if he be attended in such time as aforesaid, nor come unprepared to inform the Lord Chancellor, Lord Keeper, or the Master of the Rolls, of the nature and circumstance of the cause aforesaid. And neither he nor any of his under-Clerks, nor any of the Registers, are to take any Fee, Gratuity, or Reward for the same.

No money, or other reward, shall in any wise be exacted, or taken directly by any of the Six Clerks, or any of the Registers for, or in their behalf, for the preferring, and setting down of any cause for hearing, but only such Fees as are behind, and unpaid of their termly Fees and Duties, (if any be) and if any cause happen to be set down for hearing, wherein they shall not have been satisfied their due Fees and Duties, they may alledge the same in stay of hearing of the Cause.

Proceedings in hearing Causes.

W Here no Council appears for the Defendant at the hearing, and process appears to have been duly served the answer of such Defendant shall be read; and if the Court upon such hearing shall find cause to Decree for the Plaintiff, yet a day shall regularly be given to the Defendant to shew cause against the same: but before he be admitted thereunto, he shall pay down to the Plaintiff, or his Attorney in Court, such costs as the Court upon that hearing shall assess, and the Order is to be penned by the Register accordingly (*Viz*) *It is Decreed so and so, &c.* Unless the Defendant shall by such a day pay to the Plaintiff, or his Attorney in Court costs, and shew good cause to the contrary, and such Defendant upon his shewing cause, shall first produce a Certificate from the Plaintiffs Attorney in Court, that he hath paid the Costs, or Affidavis of tender or refusal thereof.

Contempts.

A LL Process of Contempt shall be made out into the County where the party presented is resident, unless he shall be then in, or about London, in which case it may be made into the County where the party then is. And if any person shall be taken upon process otherwise, or irregularly sued, the party so taken first appearing unto, and satisfying

the process which did regularly issue against him, shall be discharged of his contempt, and have his full costs to be taxed of course by the Six Clerks not towards the cause, for such undue or irregular prosecution from the time that the error first grew, without Motion or other order.

Every Sutor who prosecuteth a Contempt, shall do his endeavour to procure each several Process to be duly served and executed upon the party prosecuted; and his wilful default therein appearing to the Court, such person offending shall pay unto the party grieved good costs, and lose the benefit of the Process returned without such endeavour.

All Attachments in Process shall be discharged upon the Defendants payment, or tender to the Plaintiffs Clerk, and refusal of the ordinary costs of the Court, and filing his Plea Answer or Demurrer (as the case regularly requires) but yet upon Motion in Court, or Petition in that behalf.

And if after such conformity and payment of the costs (or tender and refusal thereof) any further prosecution shall be had of the said contempt, the party prosecuted shall be discharged with his costs.

If after appearance, and Interrogatories exhibited as aforesaid, the party appearing shall depart before he be examined (without leave of the Court) he is upon Motion and Certificate from the Register, of such his departing and not being examined, and of the Interrogatories exhibited from the Examiner, to stand committed without further Day given unto him, and is not to be discharged from such his Contempt, until he hath been examined and cleared of his Contempt. And if he shall upon his Examinations, or by proofs be found in Contempt, he shall clear such his Contempt, and pay to the Prosecutor his costs, before he be discharged of his Imprisonment. And although he be cleared of his said Contempt, yet he shall have no costs, in respect of his disobedience in not being examined without the Prosecutors trouble and charge moving the Court as aforesaid.

In case of prosecution of a Contempt for breach of an Order of the Court, or otherwise grounded upon an *Affidavit*, the Interrogatories shall not be extended to any other matter than what is comprehended in the said *Affidavit* or Order. And if any other shall be exhibited, the party examined may for that reason Demur unto them, or refuse to answer them.

Where the party prosecuted upon a Contempt, hath denied it, or the same doth not clearly appear by his Examinations, the Prosecutor may take out a Commission of Course to prove the Contempt; and in such case the party prosecuted may name one Commissioner to be present at the Execution of the Commission, and may henceforth (notwithstanding the former usage to the contrary) cross examine the Witnesses produced against him to prove the Contempt, but is not to examine any Witnesses on his part, unless he shall satisfy the Court touching some matter of fact, necessary to be proved in clearing the truth. In which case the Court, if there be cause, will give leave to him to examine Witnesses to such particular points set down; and the other side may cross examine such Witnesses; But the Interrogatories on both sides are to be included in the Commission.

Where a Contempt is prosecuted against one, who by reason of Age, Sickness, or other cause, is not able to travel. Or in case the same be against many Persons who are Servants or Workmen, that live far off the Court, will upon Motion and Affidavit thereof, grant a Commission to examine them in the Countrey; which Commission shall be sued out and executed at the charge of the person or persons desiring it. Directed to such indifferent Commissioners, as the Prosecutors of the Contempt shall name (as in other cases) and name one Commissioner only at the Nomination of the party prosecuted as aforesaid. Which Commission shall be Executed at such convenient time and place, as the Six Clerks not towards the cause upon hearing the Clerks upon both sides, shall set down.

Upon every Examination and proof of a Contempt referred to any of the Masters of the Court, to certify whether the Contempt be confessed or proved, or not: The Master in his Certificate thereof made to the Court, shall likewise assess and certify the Costs to either party as there shall be cause, without other Order or Motion made for that purpose.

Commitment.

THE Court being tender of the liberty of mens persons, and to avoid their Imprisonment upon malicious Affidavits, which are often made by a mean and ignorant person

son, and which hath heretofore by the course of the Court drawn on a Commitment, doth order, That from henceforth where Oath shall be made of misdemeanour in beating or abusing the party upon suing the Process or Orders of the Court, the party offending shall stand committed upon Motion, and no examination is in that case to be admitted.

And when Affidavit shall be made by two persons of Scandalous or Contemptuous words against the Court or the process thereof, the party offending shall likewise stand committed upon Motion, without any further examination. And single Affidavit in such case shall be sufficient to ground Attachment; Whereupon such person shall be brought in to be examined: And if the misdemeanour shall be confessed, proved against him, he shall stand committed untill he satisfy the Court touching his said misdemeanour, and pay the Prosecutor his Costs. And if he shall not be thereof found guilty, save by the Oath of the party who made such Affidavit, he shall be discharged, but without any Costs, in respect of the Oath made against him as aforesaid.

Decrees and Dismissions.

That all Decrees and Dismissions pronounced upon hearing the Cause in this Court be Drawn up, Signed, and Inrolled before the first day after the next Michaelmas, or Easter Term, after the same shall be so pronounced respectively, and not at any time after, without special leave of the Court.

When the party is committed, or brought in by a Sergeant at Arms for breach of a Decree, he is not to be enlarged untill he hath performed the Decree in all things that are to be presently done, and given Security by Recognizance with Sureties, as the Court shall order to perform the other part of the Decree (if any be to be performed) at future dayes and times appointed by the Decree.

No Decree or Dismission shall be presented by the Register of this Court, or his Deputy, or any other, to the Lord Chancellor, Lord Keeper, or Master of the Rolls, to be Signed before it be Signed by that Six Clerk to whom it belongeth of his proper hand writing; Or by his Deputy in his absence.

To the intent the Decrees and Dismissions of this Court may be easily found upon search, the Six Clerks are to keep a publick Book for the entring all Decrees and Dismissions which have been made and Signed by the Lord Chancellor since the Nine and Twentieth day of May 1662. and which shall be made and so Signed in this Court: And to that end, the Register shall at the beginning of every Term, deliver into one of the Six Clerks, a List of all Decrees and Dismissions signed by the Lord Chancellor, the Term and Vacation before.

If a Bill be regularly and justly dismissed of course, or by order for want of prosecution, no Motion shall be admitted for the retainer thereof, without a Certificate from the Defendant's Attorney in Court, that the Costs of the Dismission are paid, to the end unnecessary charge to the parties by several Motions for one and the same matter, may henceforth be avoided.

Masters.

THAT the Masters do not pass any Exemplifications of Depositions taken in Chancery upon a bare sight of the Copies only, without first calling the Officer or Officers, who have the custody of the Records, or Originals of such Copies, or some sworn Clerk of his, or their Office, who are to produce the same before them, to warrant their Signing thereof. The Masters are not upon the importunity of Councell, (how eminent soever) or their Clyents to return special Certificates to the Court, unless they are required by the Court so to do, or that their own judgement in respect of difficulty leadeth them unto it, such kind of Certificates for the most part occasioning a needless trouble, rather then ease to the Court, and certain expence to the Suitor.

Their Certificates and Reports are to be drawn as succinctly as may be (preserving the matter clearly for the Judgement of the Court) and without recital of the severall points of the Orders of Reference (which do sufficiently appear by the Orders themselves) or the severall Debates of Council before them: unless that in case where they are doubtful, they shortly represent to the Court the reasons which induce them so to be.

The Masters of the Court are to take notice, That when the

the Court requires to be satisfied from them, touching any matter alledged to be confessed, or set forth in the Defendants answer; It is intended, That without further Order, they should take consideration of the whole Answer or Answers of the Defendants, and certifie not only whether the matter be so confessed or set forth, but also any other matter avoiding that confession, or ballancing the same, that the Court may receive a clear and true Information.

The Masters in taking *Affidavits*, and administering of Oaths, in Cases duly presented unto them, are to be circumspect and wary, that the same be reverently and knowingly given and taken, and are therefore to administer the same themselves to the party; and where they discern him rash or ignorant, to give some conscionable admonition of his duty, and be sure he understand the matter contained in his *Affidavit*, and read the same over, or hear it read in his presence, and subscribe his name or mark thereunto, before the same be certified by the Master, who is not to receive or certifie any *Affidavit*, unless the same be fairly and legibly written without blotting, or Interlineation of any word of substance.

In all matters referred to the Masters of the Court, their Certificate (not being to ground a Decree) if it be positive, is to stand, and process may be taken out to enforce performance thereof, without further Motion, unless the adverse party, upon notice given (to his Attorney or Clerk in Court) that such report is filed against him, shall within eight dayes after such notice (if it be given in Term, or whilst the general Seals for Motions are held, or within four dayes of the next Term, if it be given after) obtain some Order in Court to controul or suspend the same, and in case of an insufficient Answer certified by the Masters the Plaintiff may immediately take out process against the Defendant for his costs, and to make a better Answer, as hath formerly been used.

Where after Certificate or Report made by the Masters of the Court, either party shall appeal from the same, to the Judgement of the Court, he shall first File his Exceptions thereunto briefly, with the Register, and deposite with him forty shillings to be paid to the other party for his costs, if he prevail not in such Appeal: And then the Register shall enter such causes of Appeal in a paper, in order as they are brought unto him to be determin'd by the Court, in course upon days of Motions, and notice thereof to be given by the party

party appealing to the Clerk of the other side. And also the Registers paper to be set up in the Office two dayes before : And if the Court shall not alter the Masters Report, then the fourty shillings deposited to be paid to the party defending the same, with such increase as the Court shall find cause to impose ; otherwise, to be restored to the party appealing, and both without charge.

The Masters Extraordinary shall not within twenty miles of London, take any Affidavit, or acknowledgment of Deeds, or Recognizances, or do any other Act incident to the place of Master of the Chancery. And to the end it may appear, whether any Master Extraordinary shall notwithstanding presume to do, Every such Master shall express the name of the Town and County where he shall take any Affidavit, or the Acknowledgement of any Deed or Recognizance ; otherwise the same shall not be held Authentical, nor omitted to be Filed or Inrolled.

Cursitor.

Whereas there is an Irregular practice lately introduced, of making forth Original Writs of *Clausum fregit* in Trespass, without any other cause of Action therein expressed of Returns past, when in truth the proper cause of Action, is either Debt, Case, Ejectment, or some other cause of action; And by Process thereupon, the Defendant is not only usually arrested, but frequently proceeded against to the Outlawry, to the great damage of the Subject, and the loss and diminution not only of the proper Original Writs issuing out of this Court, but also of his MAJESTIES Revenue for the casual Fines thereupon due and payable: It is therefore Ordered,

That no Cursitor of this Court from, and after the first day of Trinity Term next ensuing, make, or cause to be made any Writs of *Clausum fregit*, or *Clausum & Damnum fregit*, within the City of London, without special Warrant from the Lord Chancellor, or Lord Keeper of the Great Seal of England, or Master of the Rolls for the time being, unless it be made appear by Affidavit, or some other probable evidence that the same is the true and proper cause of Action.

That no Cursitor of any other County do make, or permit to be made within his respective Division any of the said Writs

The Compleat Attorney.

Writs of *Clausum fregit*, or *Clausum & Domum fregit*, of any other return, then of the last return of every respective Term, unless it be to warrant Arrests, and *Testatum Capias* only.)

That no Cursitor shall from and after the end of *Michaelmas* Term next ensuing make, or permit to be made within his respective Office and Division, any Originall Writs whatsoever of any return past, unless he shall receive the Instructions for making thereof within the Term wherein the said Writs are to be returnable; Or at the farthest, on, or before the first Esloyn day of the next succeeding Term, without special Warrant from the Lord Chancellour, or Lord Keeper of the Great Seal of *England*, or Master of the Rolls for the time being, Or good cause to be allowed of by the Principal, and Assistants of the Company of the Cursitors for the time being, or the major part of them, at their publick meetings, according as heretofore hath been used.

The Cursitors are to take care that they imploy under them in their office, none but persons of known integrity and ability; And if any Clerks, or Persons so imployed, shall be found faulty in the premisses, he shall be expelled the Office; And the Cursitor who so imployed him, shall be answerable to the Court for such Misdemeanours; And such Person, or Persons, who shall be discovered to do, or proceed otherwise then is before mentioned, shall be lyable to such censurè for his offence, as the Court shall find just to inflict upon him.

Petitions.

NO Injunction for stay of Suit at Law shall be granted, revived, dissolved, or stayd upon Petition; Nor any Injunction of any other nature, shall pass by Order upon Petition, without Notice, and a Copy of the Petition first given to the other side, and the Petition filed with the Register, and the Order entred.

No Sequestration, Dismission, Retainers upon Dismissions, or finall Orders, are to be granted upon Petition.

No former Order made in Court is to be altered, or explained upon a Petition; Or Commitment of any Person taken upon Process of Contempt, to be discharged, but upon hearing the adverse party, his Attorney or Clerk toward the Cause.

Paupers

Paupers.

AFTER an admittance *In forma Pauperis*, No Fee, Pro-
fit or Reward, shall be taken of such party admitted by
any Councillor or Attorney, for the dispatch of the Pau-
pers business, during the time it shall depend in Court,
and he continued *in forma pauperis*; nor any Contract, nor
Agreement be made for any Recompence, or Reward after-
wards. And if any person offending herein shall be discove-
red to the Court, he shall undergo the displeasure of the
Court, and such further punishment as the Court shall think
fit to inflict upon him, and the party admitted, who shall
give any such Fees or Reward, or make any such contract or
Agreement, shall be from thenceforth dispaupered, and not
be afterwards admitted again in that Suit to prosecute *in for-
ma pauperis*.

If it shall be made appear to the Court, That any per-
son prosecuting in *forma pauperis*, hath sold or contracted
for the benefit of the Suit, or any part thereof, whilst the
same depends, such cause shall be from thenceforth totally
dismissed the Court, and never again retained.

Such Council or Attorney as shall be assigned by the
Court, to assist the person admitted *in forma pauperis*, either
to prosecute or defend, may not refuse so to do, unless they
satisfie the Lord Chancellor of England, or Lord Keeper, or
Master of the Rolls, who granted the admittance, with some
good reason of their forbearance.

That Councillour who shall move any thing to the Court;
on the behalf of a person admitted *in forma pauperis*, ought
to have the Order of Admittance with him, and first to move
the same before any other Motion. And if the Register shall
find that such person was not admitted *in forma pauperis*, he
shall not draw up any Order upon the second Motion, made
by any such Council, but he shall lose the fruit of such se-
cond Motion, in respect of his abuse to the Court.

No Process of Contempt shall be made forth, and sent to
the

The Compleat Attorney.

the Great Seal, at the Suit of any person prosecuting as Plaintiff *in forma Pauperis*, untill it be signed by the Six Clerks, who deals for him and the Six Clerks, are to take care, that such Proceſs be not taken out needleſſy, or for vexation, but upon juſt or good grounds, as they will answer it to the Court, if the contrary ſhall appear.

And laſtly, It is Ordered, That all Maſters of the Court of Chancery, Councellors, and all Officers, Miniſters, Clerks, and Sollicitors in the ſaid Court, do obſerve theſe Orders, which are to continue, untill upon further conſideration and experience, any Alterations ſhall be thought fit to be made therein.

Clarendon.

Har. Grimston.

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A BRIEF

T A B L E

Of the Chief Matters contained in this
B O O K.

A.

A Ttorney his Office, Oath, and Duty, Pag.	1, 2,
	3, 4, 5, ad 23
How sworn, and Fees thereof,	3, 4
Assignment, what may be assigned, what not,	17
Age, none under the age of Twenty one years, can sue in his own name,	17, 18.
Affault and Battery, action therein,	18
Account, action therein against whom, Process there- in, where it lyes, and where not,	20. 75. ad 78 205. 207. 208
Appearance, instructions upon it, and how to draw the Declaration,	23
Amerciaments against the Sheriff, and for what,	69, 70
How to estreat them,	69, 70
Arrest, if one be arrested in another mans name, with- out his consent, he may have his action of debt,	73
Alienation, License of alienation, what and how to be sued out.	128, 129
Audita Querela, where it lyeth, and against whom,	158. ad 163

Affize

The Table.

A ffize, <i>Action and process therein, where it lyes, and for what,</i>	170 ad 173
Form of the writ,	173
What seisin is sufficient to have an Affize,	174
Declaration and Pleadings in an Affize,	174 ad 177
A lienation Office,	201
Master of the Chancery there, his Fees,	201
Office for composition of alienations, the Fees,	201
	202
A ccount, the charge of passing an Under-Sheriffs account in the Exchequer,	233, 234
A ffidavits in Chancery where to be made,	311

B.

B ayl, special, when requirable, and before whom to be given,	35, 36, 221, 243
How the Bail may be sued, and the method thereof,	36, 37
Bailiff, who so called,	75, 76
What Pleas he may plead in Affize,	176
Bargain, Agreements, and Promises,	267
Bench : Kings-Bench Rules,	343

C.

C ommon-Pleas Court, its Original,	1
Judges thereof how many,	ibid.
Rules of the same Court,	318
All the other Officers of the same Court,	1, 2, 3
Case, Actions of the Case, what to be considered therein, and where they lye,	22, 78, 79, 83, ad 85
	Chal.

The Table.

and	Challenge, what and where to be made,	27
173	Ca. Sa. to what it extends,	30, 31
173	It will follow a Fieri facias, but none after it,	31
174	Corporations, most of them throughout England set	
4 ad	down alphabetically,	47. ad 69
177	Continuance, what and how necessary,	70
201	Covenant, Action and Process therein,	91, 62
201		93, 94, 95
201	Curia Claudenda, what, where it lyes, and against	
202	whom, Process and Proceedings therein,	163
ac-		164
234	Chirographers Fees,	190, 191
311	Chirographers Clerks Fees	191
	Cryers, the four Criers Fees,	198, 199
	Court-Keepers Fees,	199
	Chancery Process and Proceedings,	250
hom	The Officers and Power of the Court,	250, 251
243		ad 255
ere-	Chattels real, and term of years,	266, 267
5, 37	Chattels personal or Goods,	267
5, 76	Chancery gives relief, where extremity is used,	274
176	Bill, Answer, Replication, Re-joynder, and all other	
267	Pleas and Proceedings there, &c.	281. ad
343		305
	Chancery Rules and Orders now in use,	358

D.

1	D Ebt, Action therein how to be managed,	4, 5
bid.	Process therein,	5, 6
18	Distress, what, where good, and where not,	19, 110
2, 3		ad 114
red	Detinue, action therein, and process,	21, 73, 74, 75
8, 9	Demurrer, to be signed by Councill,	26
85		Distringas
al:		

The Table.

Distringas nuper Vicecom. what,	70
Demand, Money due upon demand, must be asked, before an Action will accrue,	72
Dower what, what necessary thereto,	126, 127
Writ of Dower where it lyes, and of what,	127, 128
Action thereupon, and Process therein,	127, 128, 129

Declaration and Pleadings therein,	130. ad 134
Darrein Presentment, Assize of Darrein Presentment, where it lyes,	172, 173
Dutchy Court, Proceedings in it,	249, 250
Dismissions in Chancery, how attained,	308

E.

E scape, Action and Process therein,	22, 23
Elegit to what it extends,	30
Error, Writ of Error, and prosecution therein to reverse Judgement in the Common Pleas,	37. ad 41, 42.
Error in the Kings Bench, the Writ must be returnable in the Exchequer,	41
Essoyn, who may be essoyned,	45
Ejectione Firmæ, Action and Process therein,	106. ad 110. 177. ad 182
Esplees, what,	137
Entry, how and when to be made,	177, 178
When good, and when not,	179, 180
Ejector, what and who,	181
Ejectment, where it lyes,	182
Exigentors Fees,	194, 195
Essoyn, Clerk of the Essoyns Fees,	196
Exchequer Court,	228

Officers

The Table.

Officers there,	228, 229,
Exchequer-Chamber,	229, 230
Proceedings there,	230, 231, 232
Fees there upon Proceedings by English Bill,	232
	ad 236

F.

F ees, in Actions of Debt, Trespass, &c.	29, 30
For return of the Postea,	30
Fieri facias, to what it extends,	30, 31
Where it may be had against the proper goods of an Executor, &c.	32
The course to be taken therein,	32, 33
Fees thereof,	33
Fine, how it must be acknowledged at Barr in Court,	95
How before the Lord Chief Justice,	96, 67, 98
How before a Judge out of Court by Dedimus Po- testatem,	98
How before Commissioners in the Country by spe- cial Dedimus Potestatem,	99
Fees and Charges in all the cases of Fines,	100, 101
Formedon, what, both in Descender and Remainder, where it lyes,	134. ad 139
Forms of the Writ,	138
Fees, the Lord Chief Justice his Fees,	184
To other Judges,	184, 185
Divident Fees,	185, 186
Puisne Judges Fees,	186
Fees due to the Judges Clerks,	187
Custos Brevium his Fees,	188
Fees allowed by him to the Clerks of his Office,	189
To the Bag-bearer,	ibid.
	Fleet,

The Table.

Fleet, Warden of the Fleet his Fees,	203
Fees, Table of Fees in the Chancery,	315, 316,
	317, 318

H.

H ue-and-Cry, where the Venire shall arise therein,	26
Habeas Corpus, to remove Body and Cause out of an inferiour Court,	45
The fees thereof,	46
Heir, where he may be sued, and where not,	72

I.

I mpar lance what, when, and where entred,	24, 25
Issue once made, notice of Tryall,	26, 27
Jury where to arise,	27
Judgement by default how it passeth,	31, 32
When to be renewed by Scire Facias,	32
What are causes to reverse Judgement,	37
Inquiry, Writ of Inquiry, how, where, and when to be executed,	85
Joynture, what requisite thereto,	218, 219
Where good, and where not,	128
Impedit, Quare Impedit, and the Process in it,	139,
	140, 141
Where it lyes,	140
Inrollments, Clerks of the Inrollments of Warrants and Estreats his Fees,	190
Jurors, Clerks of Jurors Fees,	196
Clerks of the Inrollment of Fines and Recoveries his Fees,	200
Of Inheritance and Freeholds,	265

Injunction

The Table.

Injunction in Chancery when to be allowed, 305,
306, 307.

L.

Limitations, *Statute of Limitation to what works,* 72, 73.
Land, *how many wayes a man may have property in*
Land, 178
Leases to try a title, *how to be made and executed,* 179
Who may make them, and who not, 180
Land, *Assurance thereof defective, made perfect by*
the Chancery. 271

M.

Marshal, &c. of the Common-pleas, *his Fees,* 198
Middlesex, *Under-Sheriff of Middlesex his Fees.* 202
Misprision in Conveyances or other deeds relievable in
Chancery, 270

N.

Nisi Prius, *What to be done therein to seal it,* 28
Ne admittas, *The form of the Writ,* 141
When it lies, and when not 142
Proceedings thereupon, 142, 143.

O.

Outlawry, *how to run one to an Outlawry, and*
the time wherein, 7, 8, 9, 10:
C c Where

The Table.

Where and against whom Process of Outlawry lyeth

8, 9, 10

The best time to begin therein,

Charges therein,

How to Reverse it,

12, 13, 14

Fees thereof,

Outlawry after Judgement, and Fees therein,

Outlawry Office, the Fees thereof,

P.

PLeas special must be signed by Council,

Postea when to be called for
Procedendo, to carry back a Cause into an inferior Court, and why,

Priviledg, Attachment of Priviledg, who may have it,

Partition, Action therein, how partition is to be made

Declarations therein, and Pleadings therein,

Parco Fracto, What, and where it lies,
Who may have this Action

The several forms of the Writ

Philizers Fees,

Porter his Fees,

Prothonotaries Fees,

Prothonotaries Clerks Fees,

Priviledg, where Priviledged persons sue, what is the course,

Record

The Table.

R.

Record, Satisfaction upon Record, how to be acknowledged, and the Fees therein,	43, 43
Recovery how to be sued out;	103, 104
Charges and Fees thereof,	104, 105
Replevin, an Advowry, Action and Process therein, where it lyes, and for what,	110, ad 120
Declarations and Pleadings therein,	114, 115
	116, 119, 120
Rescous, what, where it lyes, Process and Proceedings therein,	167, ad 170
Recognizance, how to sue it,	248
Reference and Reports in Chancery,	308, 309
Register in the Chancery and h Office,	310

S

Scutage,	20
Subpoena to testifie where in issuable, and the Fees thereof,	27
Scire Facias, the manner of returning the Judgement thereby,	32, 33, 34
The Fees thereof,	35
Silver, Clerk of the Kings Silver his Fees,	193
Seal, Seal for writs, and the fees thereof,	198
Sheriff, his Fees;	214
Sheriffs, their Fees,	235, 236
Staple, how to sue upon it,	247

G c z

Trespasse,

The Table.

T.

T Respals, <i>action therein, and Process,</i>	11. 29
	87. ad 91
<i>Against whom it lies,</i>	89, 90
Testatum upon return of a Capias in London,	9.
Tales de circumstantibus, <i>when first it was given,</i>	27
Trover and Conversion, <i>Action and Process therein,</i>	86, 87
Trespas and Battery, <i>Action and Process therein,</i>	87, 88
Treasury, <i>Clerk of the Treasury his fees,</i>	192
<i>Keeper of the Treasury his fees,</i>	192
<i>Of Trusts,</i>	261. ad 265

V.

V Venire Facias, <i>what to be done therein,</i>	28
<i>Kings-Bench fees,</i>	216. 228
<i>For Writs,</i>	216
<i>For Entries,</i>	217
Kings-Bench Fees for Clerks and Attornies,	218
Secondaries fees there,	219
Fees received by the Second. for the Judges,	219
Judges Clerks fees,	219, 220
Keeper of the Papers his fees.	220
Keepers of the Files of Declarations. Clerks of the	
<i>Rules, Dogget-maker and keepers of their Bails,</i>	
<i>their fees,</i>	221, 222
Keeper of the Posteas his fees,	220
Keepers of the Rolls of Writs, Custos Brevium and	
<i>his Clerks their fees,</i>	221, 222
	Cryer

The Table.

1. 29	Tryer and Porter their fees,	222, 223
ad 91	Work of the Error his fees,	223
9. 90	Marshalls fees,	224, 225
9. 91	for Tryalls at the Kings-Bench Barr,	225,
		226
9. 92	Philizers fees,	226, 227
9. 93	triall fees otherwhere in the same Court,	227
iven,	Kings-Bench Court of what it consists, the Process	
27	and the manner of their proceedings much like	
erein,	those of the Common-Pleas,	337, 338, 339,
5, 87		ad 349
rein,		
, 88		
192		

W.

192	Warrant of Attorney its form,	11
265	Wards, Action for taking away a Ward,	19
	Ravishment de Warde, droit de guardo ; and what,	20
28	Writ, de communi Custodia, where it lyes,	19
228	Intrusion del guard. Forfeiture of Marriage : de	
216	hæred. abduct. eject. of Ward, where they	
217	lye,	ibid.
218	Wards, what Writs may be executed there, and what	
219	not,	ibid.
219	Wager at Law what it is,	43, 44
220	Who may wage his Law, and how,	44
220	Words, what are actionable, and what not,	78,
the		79
ails,	Withernam, the form of the Writ, and proceedings	
221	thereupon,	116. ad 121
20	Waste, Action and Process therein where it lyes, and	
and.	where not,	143. ad 158
22		
yer		

What

The Table.

What is Waste in Trees and Woods,	144
Without Impeachment of Waste, what the words mean,	146
Declarations and Pleadings therein,	146, 147.
The several variations therein,	ad 151
Warrantia Charta, what and where it lyes,	ibid.
Process and Proceedings, Declarations and Pleadings therein,	153
Will, how to prove it, the fees,	153. ad 158
	248, 249

T. C. L. C. O.

FINIS.

144
ean
146
47
151
bid
153
ead
158
249